



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Authorize the City Manager to sign a HOME program and Community Development Block Grant (CDBG) Loan and Regulatory Agreement, and all other documents related to the Hotel Lodi Rehabilitation Project.

MEETING DATE: June 5, 1996

PREPARED BY: Community Development Director

RECOMMENDED ACTION: Staff is recommending that the City Council approve the Loan and Regulatory Agreements and the Deed of Trust and Security Agreement for the Hotel Lodi project. Staff will then sign the documents and enter into an agreement with Lodi Hotel Investors, Ltd., and San Joaquin County for the completion of the senior apartment rehabilitation project at 5 South School Street.

BACKGROUND INFORMATION: The City Council, on a unanimous vote, granted a use permit to Daniels C. Logue Development on June 7, 1995, to convert the Hotel Lodi into senior apartments. At that time, the Council expressed a desire to be given an opportunity to review and approve the loan documents and regulatory agreement for the hotel.

The project developer, Lodi Hotel Investors, a California Limited Partnership, is proposing to convert the second and third floors of the hotel into seventy-five (75) senior residential units, including one manager's unit. The main floor commercial uses will continue to be used as they are currently, and the hotel's exterior will be unchanged, except that the brick work and other facade treatments will receive a thorough cleaning.

The upper floors of the hotel have been vacant since 1978 and have fallen into a state of general disrepair. At the completion of the project, the hotel will contain fifty (50) studio units and twenty-five (25) one bedroom units. Also, the original lobby of the hotel will be restored and used as the common area for the future residents of the hotel. Finally, as part of the project, the hotel will be seismically retrofitted and asbestos will be removed.

APPROVED: _____

H. Dixon Flynn
H. Dixon Flynn -- City Manager

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In addition to the residential conversion, the following amenities will be provided:

A fully equipped laundry room;
A security system;
Tenant storage in the basement;
An exercise room and conference room in the basement.

The City Council adopted Resolution number 95-148 on November 15, 1995 committing \$690,015 of HOME money and \$393,985 in CDBG funds to the project. The CDBG loan will be at a simple interest rate of 3% annually and the HOME funds will have a simple interest rate of 6.5% annually. Both notes will be paid off over a thirty (30) year period. The remainder of the financing will be private, including investors that will utilize a tax credit award that has been approved for this project by the State.

The total project cost is \$4,840,720 and can be broken down as follows:

Total land cost, \$775,000
Construction cost, \$2,794,000
Architectural and engineering costs, \$122,000
Interest and financing fees, \$171,800
Legal fees, \$30,000
Appraisal, \$8,500
Contingencies and reserves, \$165,000
Other (permit fees, furnishings, marketing, etc.), \$261,360
Developer overhead, \$513,060

FUNDING: Funding for this loan is from Federal HOME and CDBG funds and will therefore have no impact on the City's General Fund.



Konradt Bartlam
Community Development Director

Attachment

Prepared by Eric Veerkamp, Associate Planner

KB/EV/lw

HOME PROGRAM & COMMUNITY DEVELOPMENT BLOCK GRANT
REGULATORY & LOAN AGREEMENT BETWEEN
LODI HOTEL INVESTORS, LTD., THE CITY OF LODI,
AND THE COUNTY OF SAN JOAQUIN

- ARTICLE 1: DEFINITIONS
- ARTICLE 2: HOME & CDBG REGULATIONS
- ARTICLE 3: AFFORDABILITY COVENANTS
- ARTICLE 4: TERMS OF THE LOAN
- ARTICLE 5: LOAN DISBURSEMENTS
- ARTICLE 6: PROJECT DEVELOPMENT
- ARTICLE 7: OPERATION, MAINTENANCE AND MANAGEMENT
OF THE PROJECT
- ARTICLE 8: INCOME CERTIFICATION & REPORTING
- ARTICLE 9: NONDISCRIMINATION & EQUAL OPPORTUNITY
- ARTICLE 10: INDEMNITY & INSURANCE
- ARTICLE 11: DEFAULTS & REMEDIES
- ARTICLE 12: GENERAL PROVISIONS

- EXHIBIT A: PROPERTY DESCRIPTION
- EXHIBIT B: BUDGET
- EXHIBIT C: FINANCING COMMITMENTS
- EXHIBIT D: INSURANCE COVERAGE

REGULATORY AND LOAN AGREEMENT

(\$393,985 - CDBG FUNDS)

(\$690,015 - HOME FUNDS)

This Regulatory and Loan Agreement (the "Agreement") is made as of this _____ day of _____, 1996, by and between the City of Lodi and the County of San Joaquin, a subdivision of the State of California (the "Lender"), and Lodi Hotel Investors, a California Limited Partnership (the "Borrower").

RECITALS

A. Lender wishes to promote the development of more affordable rental housing in City of Lodi and to provide a greater choice of housing opportunities for seniors of low-income.

B. The Lender has received Home Investment Partnership Program funds (the "HOME Funds") from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Housing Act of 1990; and the Lender has received Community Development Block Grant Funds (the "CDBG Funds") from HUD pursuant to the Housing and Community Development Act of 1974, as amended, both for the purpose of expanding the supply of decent, safe, sanitary and affordable housing for very-low and low-income persons and families.

C. Borrower intends to acquire the real property located at 5 South School Street, Lodi, California, as more particularly described in the attached Exhibit "A" (the "Property") and proposes to construct a seventy-five (75) unit senior rental housing complex (the "Project").

D. Borrower also wishes to borrow from Lender and Lender wishes to extend to Borrower

a loan of CDBG funds in the amount of three hundred ninety-three thousand nine hundred eighty-five dollars (\$393,985) to support acquisition costs associated with the development of the Project (the "CDBG Loan").

E. Borrower also wishes to borrow from Lender and Lender wishes to extend to Borrower a loan of HOME funds in the amount of six hundred ninety thousand and fifteen dollars (\$690,015) to support development of eleven (11) units of the Project (the "HOME Loan").

F. The Lender has conducted an election of the voters in 1990 which authorized the Lender to allow construction annually within the County, 500 low-income units of rental housing as defined by the provisions of Article XXXIV of the California Constitution. Simultaneously with the approval of this Agreement, the Lender will allocate Article XXXIV authority to the seventy-five (75) low-income units to be developed pursuant to this Agreement.

G. The Lender has conducted an environmental review of the Project to the California Environmental Quality Act ("CEQA"), the National Environmental Protection Act ("NEPA"), and 24 C.F.R. Part 58 of the CDBG regulations and has determined that the project is "categorically exempt" under both CEQA and NEPA.

H. As a condition of the CDBG Loan and the HOME Loan, Borrower shall execute, among other things, a promissory note, a deed of trust and this Agreement, which deed of trust and Agreement shall be recorded against the Property. These instruments are intended to secure Lender's continuing interest in the affordability and habitability of the Project, as well as to secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and

representations, and in further consideration for the making of the CDBG Loan and the HOME Loan, Borrower and Lender hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.

1.1 **"AGREEMENT"** means this Regulatory and Loan Agreement entered into between Lender and Borrower.

1.2 **"AREA MEDIAN INCOME"** means the area median income adjusted by actual household size for households in the County of San Joaquin, California, as published from time to time by the State of California. If such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, then the Lender shall provide the Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by the State.

1.3 **"ASSISTED UNITS"** means eleven (11) units in the Project which are assisted by the HOME Loan and which are subject to the affordability restrictions contained in the Regulatory Agreement.

1.4 **"BORROWER"** is Lodi Hotel Investors, a California Limited Partnership, and its authorized representative, assigns, transferees, or successors-in-interest.

1.5 **"BUDGET"** means that budget for the development of the Project attached as Exhibit "B", which is hereby incorporate into this Loan Agreement by this reference.

1.6 "C.F.R." means Code of Federal Regulations.

1.7 "CDBG LOAN" is the nonrecourse loan of funds in the principal amount of three hundred and ninety-three thousand nine hundred eighty-five dollars (\$393,985) by the Lender to Borrower pursuant to this Loan Agreement.

1.8 "CDBG NOTE" is that certain promissory note in the principal amount of three hundred and ninety-three thousand nine hundred and eight-five dollars (\$393,985) to be executed by Borrower in favor of the Lender, evidencing all or any part of the CDBG Loan, which is secured by the Deed of Trust, as well as any amendments thereto to, modifications thereof, or restatements thereof. The terms of the CDBG Note are hereby incorporated into this Agreement by this reference.

1.9 "CERTIFICATE OF PROJECT COMPLETION" means the certificate issued to Borrower by Lender evidencing completion of the Project pursuant to the terms of this Loan Agreement.

1.10 "COMMENCEMENT OF CONSTRUCTION" means the time Borrower or Borrower's construction contractor begin substantial physical construction work on the Project at the Property, including site preparatory work or delivery of materials, beyond maintenance of the Property in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.11 "COUNTY" means the County of San Joaquin a subdivision of the State of California and its authorized representatives, officers, officials, directors, employees and agents.

1.12 "DEED OF TRUST" is that deed of trust, assignment of rents, and security agreement placed on the Property as security for the Loan by Borrower as trustor with Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed

of Trust are hereby incorporated into this Agreement by this reference.

1.13 "ELIGIBLE CDBG COSTS" means those Project costs related to the acquisition of the Project for which CDBG loan proceeds may be used as specified in 24 CFR 570.200(g); 570.201(a) and 570.205 -.206 and in the Budget as specified in the attached Exhibit "B", which is hereby incorporated into this Agreement by this reference and any revisions to the Budget that are approved in writing by Lender.

1.14 "FIFTY PERCENT HOUSEHOLD" same as very low income, see 1.32.

1.15 "FLOATING UNITS" means a unit, not formerly designated as HOME Program assisted, is redesignated as HOME Program assisted to replace a unit in which the tenant's income has risen above the maximum income limit, thus keeping the total number of HOME Program assisted units constant.

1.16 "GROSS RENT" means rent which includes utilities (other than telephone) which are paid by the low income tenant.

1.17 "HOME LOAN" means the nonrecourse loan in the principal amount of six hundred ninety thousand and fifteen dollars (\$690,015) by the County from fiscal year 1991-1995 Funds to the Borrower pursuant to this Agreement.

1.18 "HOME NOTE" means that certain nonrecourse promissory note in the original principal amount of six hundred ninety thousand and fifteen dollars (\$690,015) to be executed by Borrower in favor of the Lender, evidencing all or any part of the HOME Loan, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the HOME Loan are hereby incorporated into this Agreement by this reference.

- 1.19 "HUD" means the United States Department of Housing and Urban Development.
- 1.20 "LENDER" is the County of San Joaquin and the City of Lodi.
- 1.21 "LEASE" means the lease in a form satisfactory to Lender entered into between Borrower and a tenant of a unit in the Project.
- 1.22 "LOAN DOCUMENTS" are collectively this Agreement, the Deed of Trust, the CDBG Note, and the HOME Note, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.
- 1.23 "LOW-INCOME" means an annual gross income that does not exceed the qualifying limits adjusted for household size and other factors for a "low-income" household as defined under the United States Housing Act as amended, and as determined by HUD from time to time for the Stockton Metropolitan Statistical Area, except to the extent that a different definition applies pursuant to rules governing low-income housing tax credits.
- 1.24 "LOW-INCOME HOUSEHOLD" means a household whose annual income does not exceed low-income, including a Very Low-Income Household.
- 1.25 "LOW-INCOME HOUSING TAX CREDITS (LIHTC)" are credits used in a rental housing production incentive program for low income persons which is administered by the State of California as a part of the Internal Revenue Code (Tax Code).
- 1.26 "PLANS AND SPECIFICATIONS" means the plans and specifications for the Project as approved by the Lender.

1.27 "PROJECT" is the acquisition of the Property and construction of improvements on the Property into a seventy-five (75) unit rental housing complex of studios and one bedroom units affordable to senior persons of Low and Very Low-Income, which includes one manager's unit.

1.28 "PROPERTY" consists of the real property located at 5 South School Street, Lodi, California, and more particularly described in the attached Exhibit "A", which is incorporated into this Loan Agreement by this reference.

1.29 "SIXTY PERCENT INCOME" means an annual gross income, adjusted for household size and other factors, that does not exceed sixty percent of Area Median Income.

1.30 "SIXTY PERCENT INCOME HOUSEHOLD" means a household with an annual income that does not exceed Sixty Percent Income.

1.31 "VERY LOW-INCOME" means an annual gross income that does not exceed the qualifying limits, adjusted for household size and other factors for a "very low-income household" as defined under the United States Housing Act, as amended, and as determined from time to time by HUD for the Stockton Metropolitan Statistical Area (MSA), except to the extent that a different definition applies pursuant to rules governing low-income housing tax credits.

1.32 "VERY LOW-INCOME HOUSEHOLD" means a household whose annual income does not exceed Very Low-Income.

ARTICLE 2. HOME AND CDBG REQUIREMENTS

2.1 HOME REGULATIONS

A. Affordability. Any housing assisted pursuant to this Agreement will meet at a minimum the HOME affordability requirements of 24 CFR 92.252 or 24 CFR 92.254, as applicable.

B. Property Requirements. Borrower agrees to comply with the PROPERTY requirements of Subpart F of 24 CFR Part 92, as applicable in accordance with the type of PROPERTY assisted, including the limit on per-unit subsidy amounts at 24 CFR 92.250; the income limitations at 24 CFR 92.252; the tenant and participant protection at 24 CFR 92.253; the requirements for home ownership projects at 24 CFR 92.254; the requirements for mixed-income projects at 24 CFR 92.255; the requirements for mixed-use projects at 24 CFR 92.256; the requirements for religious organizations at 24 CFR 92.257; and the limitation on use of HOME funds with FHA mortgage insurance at 24 CFR 92.258.

C. Federal Requirements. If and when the Project is developed, Borrower agrees to carry out each activity in compliance with all federal laws and regulations described in Subpart H of 24 CFR Part 92, with the exception of 24 CFR 92.352 and 24 CFR 92.359, which will be administered by the Lender.

D. Failure to Comply. In accordance with 24 CFR 85.43, if Borrower materially fails to comply with any term of this Agreement, Lender may suspend or terminate this Agreement and all other agreements with Borrower and require the repayment of any funds spent (on ineligible activities).

E. Federal Regulation. Borrower will comply with the all federal regulations that apply to the HOME Program, including:

- The procedures for the project specific technical assistance and site control loans at 24 CFR 92.301;
- The procedures for income determinations at 24 CFR 92.203;
- The enumeration of eligible activities at 24 CFR 92.205 and 92.206;
- The regulations for tenant-based assistance at 24 CFR 92.211;
- The prohibition of the use of HOME funds for activities listed at 24 CFR 92.214;
- The income targeting requirements at 24 CFR 92.216 and 92.217;
- The matching funds requirements at 24 CFR 92.218-92.222, if such requirements are in effect;
- The uniform administrative requirements at 24 CFR 92.505;
- The audit requirements at 24 CFR 92.506; and
- All other provisions of 24 CFR Part 92.

2.3 COMPLIANCE WITH CDBG REGULATIONS

All requirements imposed on projects assisted under the CDBG Program as contained in the 42 U.S.C. Sections 5301, et seq., 24 CFR Part 570, and other implementing rules and regulations are incorporated by this reference. Borrower acknowledges that it has received copies of these requirements and understands them. In the event of any conflict between this Agreement and the CDBG statute and regulations, the CDBG statute and regulations shall prevail.

ARTICLE 3. AFFORDABILITY COVENANTS

3.1 OCCUPANCY REQUIREMENT

Owner shall limit for the full term of this Agreement the rental and occupancy of all residential units for sixty percent income households at the maximum rental charges for each household as set forth in this Agreement. At a minimum, twenty five percent of the eleven HOME Program funded units, or three units, must be rented to fifty percent income households. Occupancy will be governed by the Final Management Plan prepared by the borrower.

According to the requirements of 24 CFR 92.255(b) when not all of the units in a project are HOME program assisted the units counted as affordable housing units which are funded under the HOME Investment Partnerships Program may be changed over the affordability period, but the total number of HOME-assisted affordable housing units must remain the same and the substituted units must be, at a minimum, comparable in terms of size, features, and the number of bedrooms to the originally designated HOME-assisted affordable housing units. The HOME-assisted affordable housing units will be considered as "floating units" under the aforementioned terms and conditions.

3.2 ALLOWABLE RENT

A. Rent Limits. Subject to Section 3.3 below, the gross rents cannot exceed the deemed income limits for units assisted with Federal funding through either the HOME Program, CDBG Program or the Tax Credit Program, whichever are the lesser.

B. Utilities. Utilities (other than telephone) which are paid by the low income tenant must be counted as part of the gross rent for the tenant's unit. Accordingly, the rent which is collected from the tenant must be reduced by the size of a utility allowance, which is set by a utility allowance schedule formulated by the Housing Authority of the County of San Joaquin.

C. Rent Increases. At least sixty (60) calendar days prior to increasing rent on any unit, Borrower shall submit to the Lender for review and approval, a written request for such increase based on the changes in permissible rents published annually by HUD for the HOME program and based on changes in rents permitted by the California Tax Credit Allocation Committee for tax credit projects. Borrower shall annually certify each tenant's household gross income and make any rent adjustment pursuant to the terms of this Agreement. Households occupying units shall be given at least thirty (30) days written notice prior to any increase in rent. Unit rent may only be increased one time per year (unless otherwise approved in writing by the Lender) and the rent levels following an increase, or upon a new occupancy, shall not exceed the applicable rent levels set forth in subsection A. above.

3.3 INCREASED INCOME OF OCCUPYING HOUSEHOLDS

In the event, upon recertification of a household's very low income status, the Borrower discovers that the household's income exceeds the maximum designated for a very low income household, but does not exceed the sixty percent income, the household shall be reclassified as a sixty percent income household, the rent shall be increased to the permissible rent for a sixty percent income household pursuant to Section 3.2 above, and the Borrower shall lease the next available unit to a very low income household with rent restricted pursuant to Section 3.2 above. In the event, upon recertification of a household's very low income or a sixty percent income status, the Borrower discovers that the income exceeds the maximum designated for a sixty percent income household, Borrower may increase rents on such units as permitted by the Low Income Housing Tax Credit program, and the Borrower shall lease the next available unit to a very low income household or a sixty percent income household, as applicable, at the rent required for such household pursuant to Section 3.2 above, as applicable. However, when the unit is vacated by that household, the unit shall be leased to a very low income household or sixty percent income household, as applicable, to comply with Section 3.1 above.

3.4 LEASE PROVISIONS

A. Income Misrepresentation. Borrower shall include in leases or rental agreements for all units provisions which authorize Borrower to immediately terminate the tenancy of any household one or more of whose members misrepresented any fact material to the household's qualification as a sixty percent income or a very low income household. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 8.1 below, and that, if the household's income increases above the applicable limits for a very low income household or a sixty percent (60%) income household such household's rent may be increased as provided in Section 3.3.

B. Lease Restrictions. The leases for the restricted units shall comply with 24 CFR Section 92.253. All leases for units shall comply with the requirements of the State of California and federal requirements for low income housing tax credits.

C. The Borrower shall submit the proposed form of lease for the units to the Lender for its review and written approval prior to entering into any lease for a unit. The Borrower shall not use a form of lease in renting the units which has not been approved by the Lender in writing. The Borrower must submit any proposed changes to the approved lease form to the Lender for review and written approval.

ARTICLE 4. TERMS OF LOAN

4.1 LOAN

The Lender agrees to provide the CDBG Loan and the HOME Loan to borrower under the terms and conditions of the Loan Documents. The proceeds of the loans shall only be used by borrower to pay for eligible CDBG and HOME costs, and the proceeds of the loans shall be used only as permitted under this Agreement.

4.2 AMOUNT OF LOAN

A. Rent Limits. Subject to the terms and conditions of the loan documents, Lender agrees to make and borrower agrees to accept the CDBG Loan in total amount not to exceed three hundred ninety-three thousand nine hundred and eighty-five dollars (\$393,985) and evidenced by the CDBG Note, said note to be secured by the deed of trust recorded against the Property. The terms of the loan are set forth in the CDBG Note.

B. HOME Loan. Subject to the terms and conditions of the loan documents, Lender agrees to make and borrower agrees to accept the HOME Loan in total amount not to exceed six hundred ninety thousand and fifteen dollars (\$690,015), evidenced by the HOME Note, said note to be secured by the deed of trust recorded against the Property. The terms of the loan are set forth in the HOME Note.

4.3 CONDITIONS PRECEDENT TO AMENDMENT OF LOAN AMOUNT

The Lender's financial participation in the project is in the form of "Gap" financing to fill any shortfall in project development costs as shown in the Project's final approved Sources and Uses of Funds Chart, also referred as the Project Budget (Exhibit "B"). The amount of the Lender's loans shall be the difference between total project cost less borrower's equity contributions; less proceeds of tax credit syndications and less proceeds of all loans from other public and private sources. Subsequent to

approval of the loan documents as defined herein, there may arise certain events or conditions that warrant consideration of amending the Lender's loan amounts. These would include the following:

- Substantial and unforeseen increases in building materials costs which exceed contingency allowances;
- Additional project requirements requested by the Lender; and
- Unforeseen fees or charges imposed by a public agency which exceed contingency allowances.

All amendments to the loan amount must be authorized by the Board of Supervisors and the Lodi City Council by formal resolution and approved in writing by the Director's of the City's Community Development Departments and San Joaquin County's Neighborhood Preservation Division.

4.4 TERM OF LOAN

Unless subject to a prior due date, pursuant to the CDBG Note, the principal of the CDBG Loan and all accrued interest thereon shall be due and payable on the first occurring of the following: (1) thirty (30) years from the date of CDBG Note; (2) in the event the project is used and occupied for some use other than affordable rental housing for lower income families; or, (3) the expiration of the cure period for any Event of Default by borrower which has not been cured as provided for in this Agreement.

Unless subject to a prior due date, pursuant to the HOME Note, the principal of the HOME Loan and all accrued interest thereon shall be due and payable on the first occurring of the following: (1) thirty (30) years from the Certificate of Occupancy date; (2) the date the property is sold or refinanced; or, (3) the expiration of the cure period for any Event of Default by borrower which has not been cured as provided for in the loan documents.

4.5 ELIGIBLE USES OF FUNDS -

A. CDBG Loan Proceeds. CDBG Loan proceeds may be used for the eligible CDBG costs of the acquisition of the project as is shown on the budget.

B. HOME Loan Proceeds. HOME Loan proceeds may be used only for the eligible HOME costs for the restricted units as specified in Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, 24 CFR Part 92, and other regulations governing the HOME Program, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement. A copy of said regulations is incorporated by reference herein.

4.6 REDUCTION IN COSTS

If eligible costs are less than the amount of the loan specified herein, the Lender shall reduce the amount of the loan to the amount of such costs.

4.7 PREPAYMENT OF LOANS

No prepayment penalty will be charged to Borrower for payment of all or any portion of the loan amount prior to the end of the loan term described herein. However, prepayment of the loan shall not affect Borrower's obligations under the HOME Regulations in Section 2.2, all of which shall remain in full force and effect for the entire term of those requirements.

4.8 REMOVAL AND SUBSTITUTION OF GENERAL PARTNER

If the Borrower defaults under any loan document or any general partner of the Borrower defaults under the terms of any partnership agreement governing the Borrower, limited partner(s) of Borrower shall, with prior written consent of Lender be entitled to remove any of Borrower's general partners and substitute a new general partner. Such removal and substitution shall not constitute a default under any loan document or cause acceleration of the loans in whole or in part or entitle the Lender to exercise any

remedy under the loan documents.

4.9 SUBORDINATION OF DEED OF TRUST AND REGULATORY AGREEMENT

The Lender agrees to subordinate this Agreement to the liens of the deeds of trust and financing statements, if any, respectively, securing the construction and permanent financing set forth in the attached Exhibit "E" upon satisfaction of the requirement of, and to the extent permitted by, California Health and Safety Code Section 33334.14 (a).

ARTICLE 5. LOAN DISBURSEMENT

5.1 CONDITIONS PRECEDENT TO DISBURSEMENT

Lender shall not be obligated to make any disbursements of the loan proceeds or take any other action under the loan documents (other than signing the loan documents) unless the following conditions are satisfied:

A. Event of Default. There exists no Event of Default hereunder or any default under any of the other loan documents, or event, omission or failure of condition which would constitute such an Event of Default after notice of lapse of time, or both;

B. Financing Commitments. Borrower has received and delivered to Lender firm construction and permanent financing commitments from the sources and in the amounts attached as Exhibit "E" to this Agreement;

C. Financing Amounts. The undisbursed proceeds together with other financing for development of the project for which Borrower has received funds or firm commitments for funds are not less than the amount which Lender determines is necessary to pay for development of the project and satisfy all of the covenants contained in the loan documents. If Lender determines that said funds are not sufficient for said purposes, Borrower may satisfy this condition by depositing the amount of the deficiency with Lender;

D. Reporting Requirements. Borrower has complied with all reporting requirements set forth in this Agreement;

E. Construction Schedule. Borrower has delivered a construction schedule satisfactory to

Lender;

F. HUD Release of Funds. The Lender has received a "Release of Funds" from HUD to the extent required for disbursement of the CDBG Loan and the HOME loan;

G. Loan and Other Documents. Borrower has authorized, executed and delivered to Lender, all loan documents, other documents, instruments, policies, and forms of evidence or other materials required to be executed and delivered as of the time of disbursement under the terms of this Agreement or any of the other loan documents, all in form and substance satisfactory to Lender.

H. Title Insurance. Borrower has obtained at its own expense an ALTA Loan Policy (LP-10) of title insurance naming Lender as the insured with liability not less than the principal amount of the total loan, issued by an insurer satisfactory to Lender, excepting only such defects, liens, encumbrances, and exceptions as are approved by Lender, and containing such endorsements as Lender may require.

5.2 CONDITIONS PRECEDENT TO DISBURSEMENT UPON OR AFTER COMMENCEMENT OF CONSTRUCTION

Lender shall not be obligated to make any disbursements of loan proceeds for construction expenses as set forth in the budget attached as Exhibit "B" unless all of the following conditions precedent are satisfied:

A. Conditions for Disbursement. All the conditions in Section 5.1 are satisfied; and

B. Borrower has delivered to Lender evidence satisfactory to the Lender that the proceeds of the loans set forth in the chart entitled The Budget in Exhibit "B" either have been disbursed, shall be disbursed on the date of disbursement of funds subject to this Agreement, or shall be disbursed upon the happening of events which are acceptable to the Lender.

ARTICLE 6. DEVELOPMENT OF PROJECT

6.1 CONFIGURATION OF THE PROJECT

Borrower shall develop the Project in accordance with the plans and specifications as a senior residential apartment project consisting of fifty (50) studios and twenty-five (25) one-bedroom units, which includes one manager's unit. Borrower shall develop the Project in conformance with the plans and specifications and any modifications thereto approved by Lender.

6.2 FINANCING

Borrower shall promptly inform Lender of any changes in the amount, terms, and/or sources of financing or funding for the Project. All costs incurred in predevelopment, development and operation of the Project shall be the responsibility and obligation solely of Borrower.

6.3 CONTRACTS AND SUBCONTRACTS

All construction work and professional services for the Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California.

6.4 COMMENCEMENT OF CONSTRUCTION

Borrower shall begin construction of the Project no later than thirty (30) days from issuance of building permit, unless such date is extended in writing by the Lender as provided in Section 6.6. Borrower shall not commence construction until Lender has issued a written notice to proceed.

6.5 COMPLETION OF CONSTRUCTION

Following commencement of construction, Borrower shall diligently prosecute construction of the project to completion as evidenced by the recording of the Certificate of Project Completion. Borrower

shall complete construction of the project within eighteen (18) months of the commencement of construction.

6.6 SCHEDULING AND EXTENSIONS OF TIME

It shall be the responsibility of Borrower to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Agreement. Lender may extend the time for commencement or completion in writing at its sole and absolute discretion. Any time extension granted to Borrower to enable Borrower to complete the work shall not constitute a waiver of any other rights Lender has under the loan documents.

6.7 QUALITY OF WORK

Borrower shall construct the project in conformance with industry construction standards and shall employ building materials of a quality suitable for the requirements of the project as approved by the Lender in the plans and specifications. Borrower shall develop the project in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes.

6.8 ADDITIONS OR CHANGES IN WORK

Lender must be notified in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the approved plans and specifications. A written change order authorized by Lender must be obtained before any of the following changes, additions, or deletions in work for the project may be performed: (1) any change in the work that exceeds ten thousand dollars (\$10,000); or (2) any set of changes that cumulatively exceeds two hundred and fifty thousand dollars (\$250,000); or (3) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the project as provided for the plans and specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release Borrower from any other obligations in the loan documents, or relieve or

release Borrower or its surety from any guaranty or completion assurance.

6.9 RECORDS

Borrower shall be accountable to Lender for all funds disbursed to Borrower pursuant to the Loan Documents. Borrower agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said loan funds for not less than three years after completion of the project as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. Lender shall notify Borrower of any records it deems insufficient. Borrower shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by Lender in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Borrower shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

Borrower shall promptly comply with all requirements or conditions of the loan documents relating to notices, extensions, and other events required to be reported or requested. Borrower shall promptly supply, upon the request of Lender, any and all information and documentation which involves the Project and cooperate with Lender in the development of the Project.

6.10 INSPECTIONS

Borrower shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by Lender and by public authorities during reasonable business hours for the purposes of determining compliance with the Agreement.

6.11 AUDITS

Borrower shall submit to the Lender annual audited financial statements to the agency within one

hundred fifty (150) days of the end of each calendar year. Borrower shall make available for examination at reasonable intervals and during normal business hours to Lender all books, accounts, reports, files, and other papers or property with respect to all matters covered by the loan documents, and shall permit Lender to audit, examine, and make excerpts or transcripts from such records. Lender may make audits of any conditions relating to this loan at the expense of the party requesting such audit, unless such audit shows a discrepancy equal to or greater than three percent (3%) in the information reported by Borrower to Lender in which case Borrower shall bear the cost of such audit.

6.12 CONSTRUCTION RESPONSIBILITIES

Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Project, including, but not limited to, the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by Lender with reference to the project is solely for the purpose of determining whether Borrower is properly discharging its obligations to Lender, and should not be relied upon by Borrower or by any third parties as a warranty or representation by Lender as to the quality of the design or construction of the project.

6.13 ENCUMBRANCE OF PROPERTY

Except as otherwise provided in this Agreement, prior to the repayment, Borrower shall not engage in any financing or any other transaction creating any security interest or other encumbrance or lien upon the property, whether by express agreement or operation of law, or allow any encumbrance or lien to be made on or attached to the property, except with the prior written consent of Lender. Until full repayment of the loan, Borrower shall notify Lender in writing in advance of any financing secured by any deed of trust, mortgage, or other similar lien instrument that it proposes to enter into with respect to the project or property, and of any encumbrance or lien that has been created on or attached to the property

whether by voluntary act of Borrower or otherwise.

6.14 TRANSFER OF PROPERTY

Borrower has not made or created, and shall not, prior to full repayment of the loan, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the Project or the Property, or any part thereof, including the sale or transfer of any general partner interests in Borrower, without the prior written consent of Lender through Lodi City Council and San Joaquin County Board of Supervisors. Lender shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (1) Borrower is in compliance with the loan documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the loan documents; (2) the transferee agrees to assume all obligations of Borrower imposed by this Agreement and the other loan documents; (3) the transferee demonstrates to Lender's sole satisfaction that it is capable of and intends to own and operate the Project in full compliance with this Agreement and the other loan documents; and (4) the terms of the sale, transfer, or conveyance shall not jeopardize Lender's security interest in the property and is in full compliance with all standards, including eligibility requirements and other conditions imposed by any funding sources for the Project and the Loan Documents.

6.15 MECHANICS LIENS AND STOP NOTICES

If any claim of lien is filed against the property or a stop notice affecting the loan is served on Lender or any other lender or other third party in connection with the project, Borrower shall, within twenty (20) days of such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to Lender a surety bond in sufficient form and amount, or provide Lender with other assurance satisfactory to Lender that the claim of lien or stop notice will be paid or discharged.

If Borrower fails to discharge any lien, encumbrance, charge, or claim referred to herein, then in

addition to any other right or remedy, Lender may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternatively, Lender may require Borrower to immediately deposit with Lender the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. Lender may use such deposit to satisfy any claim or lien that is adversely determined against Borrower.

Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction on the project for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the property. Borrower authorizes Lender, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that Lender deems necessary or desirable to protect its interest in the project and property.

6.16 CERTIFICATE OF PROJECT COMPLETION

Upon completion of development of the Project, Borrower shall submit certification from the architect for the Project stating that the improvements to the Property have been made in accordance with the plans and specifications and the terms of the Loan Documents. Upon: (1) submission of this architect's certification; (2) a determination of final project costs; (3) a permanent certificate of occupancy has been issued for all buildings in the Project; (4) a determination by Lender that Borrower has satisfied all of Borrower's development obligations under this Agreement; and (5) completion of an independent audit of the Project, Lender shall furnish Borrower, within thirty (30) calendar days of written request by Borrower, with a Certificate of Project Completion for the Project. The Certificate shall be in a recordable form acceptable to Lender. If Lender fails to provide the Certificate within the specified time, it shall provide Borrower with a written statement indicating in what respects Borrower has failed to complete construction of the project in conformance with this Agreement or is otherwise in violation of the terms of the Loan Documents. If and when Borrower has corrected the specified deficiencies, and is not otherwise in violation under the Loan Documents, Lender shall deliver the Certificate of Project Completion

to Borrower.

6.17 FEES, TAXES, AND OTHER LEVIES

Borrower shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as; (1) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (2) Borrower deposits with Lender, if requested by Lender, any funds or other forms of assurance Lender in good faith from time to time determines appropriate to protect Lender from the consequences of the contest being unsuccessful.

6.18 UNAVOIDABLE DELAY IN PERFORMANCE

The time for performance of provisions of this Agreement by either party (other than repayment of the loan) shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by: war, casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or inclement weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause, and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within fifteen (15) calendar days of receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any unavoidable delay notwithstanding. Notwithstanding the immediately preceding sentence, times of performance under this Agreement may also be extended for any cause for any period of time by the mutual written agreement of the Director
s of the City's Community Development Department and San Joaquin County's Neighborhood Preservation Division or his or her designee and Borrower.

ARTICLE 7. OPERATION, MAINTENANCE, AND MANAGEMENT OF THE PROJECT

7.1 USE AS RENTAL HOUSING

The Project shall be operated only as senior rental housing. No part of the development shall be operated as transient housing.

7.2 PROPERTY TAX EXEMPTION

Borrower shall not apply for a property tax exemption for the Property or the Project under any provision of law without the Lender's prior written consent.

7.3 CONDOMINIUM CONVERSION

The Borrower shall not convert units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the term of this Agreement.

7.4 TAXES AND ASSESSMENTS

Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Borrower shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

7.5 TENANT SELECTION

Before renting or leasing units in the Project, Borrower must provide Lender, for its review and

approval, Borrower's written tenant selection plan. The Borrower's tenant selection plan must, at a minimum, meet the requirements for tenant selection set out in 24 CFR 92.253(e) and any modifications or successors thereto for the restricted units.

7.6 INCOME RECERTIFICATION

Borrower shall recertify each tenant's household income on an annual basis as specified in ARTICLE 8. Borrower must determine the income eligibility of each tenant household pursuant to Lender's approved tenant certification procedures within sixty (60) days of the household's occupancy anniversary.

7.7 AFFORDABILITY RESTRICTIONS

The affordability of the assisted units and the restricted units shall be maintained in accordance with the terms and conditions of this Agreement.

7.8 MANAGEMENT RESPONSIBILITIES

Borrower is specifically responsible, subject to its obligations herein, for all management functions with respect to the Project, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Lender shall have no responsibility over management of the Project.

7.9 MANAGEMENT AGENT, BUDGET, AND PERIODIC REPORTS

A. Management Agent. The Project shall at all times be managed by an experienced management agent (the "Management Agent") reasonably acceptable to the Lender, with demonstrated ability to operate affordable apartment complexes similar to the Project in a manner that will provide decent, safe, and sanitary housing. If such management agent is an entity or person other than the Borrower, the Borrower shall submit for the Lender's approval the identity of any proposed management

agent. The Borrower shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for the Lender to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed management agent meets the standard for a qualified management agent set forth above, the Lender shall approve the proposed management agent by notifying Borrower in writing. Unless the proposed management agent is disapproved by the Lender within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. The Borrower is approved by the Lender as an acceptable management agent.

B. Performance Review. The Borrower shall cooperate with the Lender in the periodic review of the management practices and financial status of the Project at the following times: (1) within thirty (30) days after the Certificate of Occupancy Date; (2) within six (6) months after the Certificate of Occupancy Date; and (3) within one hundred fifty (150) days following the end of each fiscal year. The purpose of each periodic review will be to enable the Lender to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement.

C. Annual Budget. The Borrower shall provide the Lender for their review and approval, not later than thirty (30) days prior to commencement of each fiscal year, the annual budget for the upcoming fiscal year, which shall include a replacement reserve analysis and shall be in a form acceptable to the Lender. Unless the proposed annual budget, including without limitation, expenses for payroll, administration, management costs, and reserves is disapproved by the Lender within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. Failure to comply with the provisions of this Section shall constitute a default under this Agreement, and the Lender may enforce this provision through any legal remedy available to them.

D. Project Reserves. The Borrower shall maintain operating reserves and replacement reserves for the Project as required by other lenders or tax credit investors for the Project; provided that the total annual deposit into the replacement reserve cannot exceed five hundred dollars (\$500) per unit up to a total replacement reserve limit of five percent (5%) of the total development costs for the Project. In addition, all excess proceeds (as defined in the CDBG note and the HOME note) not used to repay the CDBG note and/or the HOME note, as determined by the Lender at its sole and absolute discretion, shall be used to initially fund the replacement reserve. No payments which cumulatively exceed twenty thousand dollars (\$20,000) in a fiscal year may be made from the replacement reserve for the Project without the prior written consent of the Lender as determined in their annual review of the budget for the Project; provided however that the Borrower may make emergency repairs without such consent so long as the owner notifies the Lender in writing within five (5) days of such expenditure. Failure to comply with the provisions of this Section shall constitute a default under this Agreement, and the Lender may enforce this provision through any legal remedy available to them.

E. Books, Records and Reports. For purposes of such periodic reviews, the Borrower and the management agent shall make available to the Lender for inspection all books and records with respect to the Project. In addition, the borrower shall provide the Lender, within one hundred fifty (150) days following the end of each fiscal year: (1) a report showing the actual income and expenditures with respect to the Project for the immediately preceding fiscal year and the status of all reserve funds; (2) a report certifying the household income of each tenant household in a form reasonably acceptable to the Lender; and (3) a copy of the Borrower's federal income tax filings for the fiscal year.

F. Replacement of Management Agent. If, as a result of a periodic review, the Lender determines in its reasonable judgment that the Project is not being operated and managed in accordance with any of the requirements and standards of this Agreement, the Lender shall deliver notice to the Borrower of their intention to cause replacement of the management agent and the reasons for such

intention. Within fifteen (15) days of receipt by the Borrower of such written notice, the Lender and the Borrower shall meet in good faith to consider methods for improving the financial and operating status of the Project, including, without limitation, replacement of the management agent.

If, after such meeting, the Lender elects to proceed with the replacement of the management agent, the Lender shall so notify the Borrower in writing within fifteen (15) days following the meeting (the "Post Meeting Notice"). Thereupon, the Borrower shall: (1) have fifteen (15) days to cure such problem without replacing the management agent (or, if the cure cannot be completed within fifteen (15) days at the Lender's sole discretion and as set forth in the Post Meeting Notice, to commence within fifteen (15) days of the Post Meeting Notice and to diligently prosecute a cure until completed by the time set forth in the Post Meeting Notice); or (2) promptly dismiss the management agent and appoint as the management agent a person or entity meeting the standards for a management agent set forth in Section 7.9(A) above and approved by the Lender pursuant to Section 7.9(A) above.

Any contract for the operation or management of the Project entered into by the Borrower shall provide that the contract can be terminated as set forth above. Failure to remove the management agent in accordance with the provisions of this section shall constitute default under this Agreement, and the Lender may enforce this provision through any legal remedy available to them.

7.10 Final Management Plan. At least ninety (90) calendar days prior to completion of construction of the Project, Borrower shall submit to the Lender for review and approval a plan for marketing and managing the Property (the "Final Management Plan"). The Final Management Plan shall address in detail how Borrower plans to market availability of the units to prospective tenants in accordance with the Lender's affirmative fair housing marketing guidelines attached as Exhibit "F" to this Agreement and how Borrower plans to certify the eligibility of potential tenants. The Final Management Plan shall include the tenant selection plan required pursuant to Section 7.5. The Final Management Plan

shall also address how the Borrower and the management entity plan to manage and maintain the Property, and shall include appropriate financial information and documentation. The Final Management Plan shall include a form lease agreement that Borrower proposes to enter into with the Project tenants. Borrower shall abide by the terms of this Final Management Plan in marketing, managing, and maintaining the Property.

At least ninety (90) calendar days prior to completion of construction of the Project, Borrower shall also submit a proposed management contract to the Lender for its prior review and approval. The Lender shall have the right to review and approve any proposed amendments to the management contract or any new management contracts during the term of this Agreement.

7.11 Maintenance and Security. Borrower shall, at its own expense, maintain the Property in good condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of unit occupants. Borrower shall not commit or permit any waste on or to the Property, and shall prevent and/or rectify any physical deterioration of the Property. Borrower shall provide adequate ongoing security equipment and services for unit occupants. Borrower shall maintain the Property in conformance with all applicable state, federal, and local laws, ordinances, codes, and regulations and the Final Management Plan.

In the event that Borrower fails to maintain the Property in accordance with these standards and after at least seven (7) calendar days prior notice to Borrower, the Lender or its contractors or agents may, but shall be under no obligation to, enter upon the Property, make such repairs or replacements as are deemed necessary in the Lender's discretion, and provide for payment thereof. Any amount advanced by the Lender to make such repairs, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the HOME Note for Lender advances (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear

interest at the highest rate then allowed by applicable law), shall become an additional obligation of Borrower to the Lender, respectively, and shall be secured by the deed of trust, if not previously reconveyed.

7.12 Property Damage or Destruction. If any building or improvements erected by Borrower on the Property shall be damaged or destroyed by an insurable cause, Borrower shall, at its own cost and expense, diligently repair or restore the Property consistent with the original plans and specifications for the Project. Such work or repair shall be commenced within sixty (60) days after the damage or loss occurs and shall be completed within one hundred eighty (180) days thereafter. All insurance proceeds with loss payable to Lender, collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Borrower shall make up the deficiency.

7.13 Right of Purchase. The City of Lodi has the right to purchase the property from the borrower in the event of: 1) the operation, maintenance and management of the project has not complied with Sections 7.1 - 7.12; or 2) the use of the project has been altered from senior housing to other types. The purchase price will be established by a mutually agreed upon M.A.I. Appraiser. The established price in any event will not be less than the existing balance due on the HOME and CDBG loans.

ARTICLE 8. INCOME CERTIFICATION AND REPORTING

8.1 INCOME CERTIFICATION

Borrower shall obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each tenant household renting any of the Units. Borrower shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain a W-2 form or an income tax return for the most recent tax year; (3) conduct a credit agency or similar search; (4) obtain an income verification form from the applicant's current employer; (5) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (6) if the applicant is unemployed and has no such income verification information, obtain another form of independent verification. Copies of tenant income certification shall be available to the Lender upon request. The certification process used must be consistent with the May 1994 edition of HUD-1470-CPD, "Technical Guide for Determining Income and Allowances for the HOME Program".

8.2 ANNUAL REPORT TO THE LENDER

Each year Borrower shall submit an annual report to the Lender, in a form approved by the Lender. The annual report shall include for each rental unit covered by this Agreement, the rent and the income and family size of the household occupying the unit. The report shall also state the date the tenancy commenced for each rental unit and such other information as the Lender may be required by law to obtain.

8.3 ADDITIONAL INFORMATION

Borrower shall provide any additional information reasonably requested by the Lender. The

Lender shall have the right to examine and make copies of all books, records or other documents of Borrower which pertain to any unit.

8.4 RECORDS

Borrower shall maintain complete, accurate and current records pertaining to the units, and shall permit any duly authorized representative of the Lender, during business hours, and with no prior notice to inspect records, including records pertaining to income and household size of tenant households.

ARTICLE 9. NONDISCRIMINATION AND EQUAL OPPORTUNITY

9.1 EMPLOYMENT PROVISIONS

The Equal Employment Opportunity provisions in Subsection's (A) and (B) below are applicable to all contracts and subcontracts; and the provisions in Subsections (C) through (G) are applicable to all nonexempt construction contracts and subcontracts which exceed ten thousand dollars (\$10,000).

During the performance of this Agreement, Borrower agree as follows:

A. Race, Color, Religion, Sex, Age, Disability, Sexual Orientation, Ancestry or National Origin. Borrower will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, sexual orientation, ancestry, national origin or any other basis prohibited by applicable law. Borrower will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, age, disability, sexual orientation, ancestry, or national origin. Such action will include, but not be limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

B. Solicitations and Advertisements. Borrower will, in all solicitations or advertisements for employees placed by or on behalf of Borrower, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, disability, sexual orientation, ancestry, national origin or any other basis prohibited by applicable law.

C. Employee Notices. Borrower will send to each labor union or representative of workers with whom it has a collective bargaining agreement or other written collective contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Borrowers' commitments under this section, and will post copies of the notice in conspicuous places available to employees and applicants for employment.

D. Equal Employment Opportunity. Borrower will comply with all applicable provisions of Executive Order 11246, Equal Employment Opportunity, of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. Access to Records. Borrower will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F. Noncompliance with Nondiscrimination Clauses. In the event of Borrowers' noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part pursuant to ARTICLE 11 and Borrower may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or as otherwise provided by law.

G. Notice to Subcontractor's and Vendors. Borrower will include the portion of the sentence immediately preceding Subsection (A) and the provisions of Subsections (A) through (F) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. Borrower will take such action with respect to any subcontract or purchase order as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Borrower becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, Borrower may request the United States to enter into such litigation to protect the interests of the United States.

9.2 EQUAL OPPORTUNITY IN PARTICIPATION

In conformance with Lender policy and all requirements imposed by or pursuant to 24 CFR 92.350, no person in the United States will on the ground of race, color, religion, sex, disability, sexual orientation, ancestry, national origin, citizenship status, or any other basis prohibited by applicable law is excluded from participation in, denied the benefits of, or be subjected to discrimination under, any Project or activity funded in whole or in part with HOME funds.

The following specific (not exclusive) discriminatory actions are prohibited:

Borrower may not directly or through contractual or other arrangements, on the ground of race, color, religion, sexual orientation, ancestry, national origin, citizenship status, disability, sex or any other basis prohibited by applicable law:

1. Deny any facilities, services, financial aid, or other benefits provided under the Project or activity.

2. Provide any facilities, services, financial aid, or other benefits which are different, or are provided in a different form from that provided to others under the Project or activity.
3. Subject to segregated or separate treatment in any facility in, or in any matter or process related to, receipt of any service or benefit under the Project or activity.
4. Restrict in any way access to, or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the Project or activity.
5. Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services, or other benefit provided under the Project or activity.
6. Deny an opportunity to participate in a Project or activity as an employee.

9.3 BUSINESS AND EMPLOYMENT OPPORTUNITIES FOR LOWER
INCOME RESIDENTS

Borrower will conform with the rules and regulations set forth under Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the HUD regulations issued pursuant thereto at 24 CFR Part 135. This act requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the Project area, and contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the area of the Project. In all solicitations for bids, the contractor must, before signing the contract, provide a preliminary statement of the work force needs and plans for

possible training and employment of lower income persons. When Borrower utilizes the bidding procedure to let a bid, the invitation or solicitation for bids will advise prospective contractors of any applicable requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, and the clause will be inserted as a component part of any contract or subcontract. If Borrower solicits or requests an invitation for bids, every effort feasible will be made to contact minority organizations for a response to the solicitation or invitation for bidders.

9.4 MINORITY AND WOMEN'S BUSINESS OUTREACH

Borrower will comply with and participate in the minority and women's business outreach program established by the Lender for the HOME Program, consistent with 24 CFR 92.350, 24 CFR 92.351, and Executive Orders 11625, 12432, and 12138.

9.5 NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS

Borrower will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 42 U.S.C. 2000d et seq.) and the Fair Housing Act (42 U.S.C. 3601-20). In accordance with Lender policy and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), in the sale, lease or other transfer of land acquired, leased or improved with assistance provided under this Agreement, the deed or lease for such transfer will contain a covenant prohibiting discrimination upon the basis of race, color, religion, sex, disability, sexual orientation, ancestry or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon. Borrower will comply with Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) as amended and will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing.

ARTICLE 10. INDEMNITY AND INSURANCE

10.1 INSURANCE COVERAGE

Borrower shall cause to have in full force and effect from the date of close of Escrow through the term of the Regulatory Agreement the insurance coverage specified in Exhibit "D" until the issuance of a certificate of occupancy for all units in the Project or such other shorter time as Lender approves in writing.

10.2 INSURANCE ADVANCES

In the event Borrower fails to maintain the full insurance coverage required by this Agreement, Lender, after at least seven (7) business days prior written notice to Borrower, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by Lender, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the HOME Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Borrower to Lender and shall be secured by the deed of trust.

10.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS

Lender, its officials, employees and agents shall not be personally liable to Borrower for any obligation created under the terms of the Loan Documents except in the case of actual fraud, willful misconduct or sole gross negligence by such person.

10.4 INDEMNITY

Except for the sole gross negligence, actual fraud or willful misconduct of the Lender, the Borrower undertakes and agrees to defend, indemnify, and hold harmless Lender from and against all

suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever occurring on the Property or the Project or arising in any manner by reason of or incident to the performance of this Agreement on the part of the Borrower or any contractor or subcontractor of Borrower, whether or not contributed to by an act or omission of the Lender. Borrower shall pay immediately upon Lender's demand any amounts owing under this indemnity. The duty of Borrower to indemnify includes the duty to defend Lender or, at Lender's choosing, to pay Lender's costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the Project or the Property. Borrower's duty to indemnify Lender shall survive the term of the loan and reconveyance of the deed of trust.

ARTICLE 11. DEFAULTS AND REMEDIES

11.1 EVENTS OF DEFAULT

The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this loan agreement:

A. Monetary: (1) Borrower's failure to pay when due any sums payable under the CDBG Note or the HOME Note, or any advances made under the deed of trust or this Agreement; (2) Borrower's use of CDBG Loan funds or HOME Loan funds for costs other than eligible CDBG or HOME costs respectively, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) Borrower's failure to obtain and maintain the insurance coverage required under this Agreement; (4) Borrower's failure to make any other payment or assessment due under the Loan Documents.

B. Construction: (1) Borrower's substantial deviation in the work of construction specified in the plans and specifications submitted to Lender, without Lender's prior written consent; (2) Borrower's use of defective or unauthorized materials or defective workmanship in constructing the Project; (3) Borrower's failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Agreement, according to the construction schedule specified in this Agreement; (4) the cessation of construction prior to completion of the project for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of Borrower or the Project that gives Lender reasonable cause to believe that the project cannot be constructed by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the Property or service on Lender of any stop notice relating to the loans and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) Borrower's failure to remedy any deficiencies in record keeping or failure to provide records to Lender upon Lender's request; (8) Borrower's failure to

substantially comply with any federal, state, or local laws or Lender policies governing construction, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and hazardous materials;

C. Operation. (1) discrimination by Borrower on the basis of characteristics prohibited by this Agreement or applicable law; (2) the imposition of any encumbrances or liens on the Property without Lender's prior written approval that are prohibited under this Agreement or that have the effect of reducing the priority of or invalidating the deed of trust; (3) any material adverse change in the condition of Borrower or the Project or permanent financing or funding for the Project that gives Lender reasonable cause to believe that the Project cannot be operated according to the terms of the Loan Documents or this Agreement;

D. General Performance of Loan Obligations. Any substantial or continuous breach by Borrower of any material obligations on Borrower imposed in the loan documents;

1. Liens; Attachment; Condemnation: The filing of any claim or lien against the Project, or any part thereof and the continuance of the claim for lien after Borrower receives actual notice thereof without discharge, satisfaction or provision for payment being made to the satisfaction or provision for payment being made to the satisfaction of the Lender.
2. Performance of Obligations: Borrower's default under any of the other Loan Documents, Borrower's default under any ground lease of the Property, or Borrower's failure to perform its obligations under this Agreement and, in each case, the expiration of any time provided for the remedy of such failure.

3. Representations and Warranties: Any of Borrower's representations or warranties in any of the Loan Documents or any written statements, certificates or schedules furnished by Borrower to the Lender, will prove to have been untrue in any material respect when made or Borrower will have concealed any material fact from the Lender.
4. Voluntary Bankruptcy; Insolvency; Dissolution: Borrower or any general partner of Borrower's: (1) filing of a petition for relief under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (2) filing any pleading in any involuntary proceeding under any state or federal law regarding bankruptcy, reorganization or other relief to debtors which admits the jurisdiction of the court or the petition's material allegations regarding Borrower's insolvency; (3) making a general assignment for the benefit of creditors; (4) applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower, any general partner of Borrower or any of their respective properties; or (5) inability or admission in writing of its inability to pay its debts as they are due.
5. Involuntary Bankruptcy: Borrower or any general partner of Borrower's failure to effect a full dismissal of any involuntary: (1) petition under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (2) proceeding for the appointment of a receiver, trustee or liquidator of Borrower or any general partner of Borrower or all or a material part of the assets of Borrower or any general partner of Borrower, or (3) petition or proceeding under other state or federal law regarding bankruptcy, reorganization or other relief to debtors that is filed against Borrower or any general partner of Borrower or in any way restrains or limits Borrower or any general partner of Borrower or the Lender regarding the Loan, the Project, in any event prior to the earlier of the entry of any order granting relief sought in the involuntary petition or proceeding,

or sixty (60) days after the date of filing of the petition or beginning of the proceeding.

6. General: Borrower's breach of any material condition, covenant, warranty, promise or representation contained in this Agreement not otherwise resulting in an Event of Default hereunder.

7. Rental: Failure to operate facility as a senior only complex.

11.2. NOTICE AND CURE

If a default occurs under this Agreement, prior to exercising any remedies the Lender will give to Borrower written notice specifying: (1) the applicable event, (2) the action required to prevent such event becoming an Event of Default, and (3) a date, which will be not less than thirty (30) days after the date of notice is mailed to Borrower by which action must be taken to cure the default. If the default is reasonably capable of being cured within thirty (30) days, Borrower will have such period to affect a cure prior to exercise of any remedies by the Lender. If the default cannot reasonably be cured within thirty (30) days, and if Borrower (1) initiates corrective action within said thirty (30) day period; and (2) diligently works to effect a cure as soon as possible, then Borrower will have such additional time as is determined by the Lender to be reasonably necessary to cure the default prior to exercise of any remedies by the Lender. If Borrower fails to take corrective action or to cure the default within such specified additional time, the Lender will give Borrower written notice thereof whereupon a limited partner may remove and replace the general partner with a substitute general partner who will effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. In no event will the Lender be precluded from exercising remedies under the Loan Documents if its security for the loan becomes or is about to become materially jeopardized by any failure to cure a default. The Lender agrees to accept cures offered by a limited partner or an affiliate of a limited partner within the cure periods provided to Borrower in the loan documents or within the time periods provided in Civil Code Section 2924c, whichever are longer.

Additionally, in the event a limited partner is precluded from curing a default due to an inability to remove the general partner as a result of bankruptcy, injunction, or similar proceeding, the Lender agrees to forebear from completing a foreclosure (whether judicial or nonjudicial) while the limited partner is so precluded from acting, for a period not to exceed one hundred and eighty (180) days.

11.3 REMEDIES UPON AN EVENT OF DEFAULT

Upon the happening of an Event of Default the Lender's obligation to disburse proceeds of the Loan will terminate and the Lender will have the right to terminate this Agreement. Additionally, the Lender may, at its option, declare Borrower's notes to the Lender for the proceeds of the loans immediately due and payable, all without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor. Upon the occurrence of an Event of Default the Lender may also, in addition to all other rights and remedies available to the Lender hereunder or under the Loan Documents or applicable law, at its option, seek an order for specific performance in any court of competent jurisdiction or may apply to any such court for the appointment of a receiver to take over and operate the Project in accordance with the terms of the Loan Documents, or for such other relief as may be appropriate.

11.3 LENDER'S REMEDIES (Optional)

Upon the happening of an Event of Default by Borrower and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), Lender's obligation to disburse loan proceeds shall terminate, and Lender may also, in addition to other rights and remedies permitted by the loan documents or applicable law, proceed with any or all of the following remedies in any order or combination Lender may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the CDBG Note and the HOME Note, as well as any other monies advanced to

Borrower by Lender including administrative costs, shall immediately become due and payable at the option of the Lender;

B. Bring an action in equitable relief: (1) seeking the specific performance by Borrower of the terms and conditions of the loan documents; and/or (2) enjoining, abating, or preventing any violation of said terms and conditions; and/or (3) seeking declaratory relief;

C. Accelerate the loan, and demand immediate full payment of the principal amount outstanding and all accrued interest under the CDBG Note and the HOME Note, as well as any other monies advanced to Borrower by Lender;

D. Enter the property and take any actions necessary in its judgment to complete construction of the Project, including without limitation: (1) making changes in the plans and specifications or other work or materials with respect to the Project; (2) entering into, modifying, or terminating any contractual arrangements (subject to Lender's right at any time to discontinue work without liability); and, (3) taking any remedial actions with respect to hazardous materials that Lender deems necessary to comply with Hazardous Materials Laws or to render the property suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve Lender's interest in seeing the Project developed in a timely manner (including the authority to take any remedial actions with respect to hazardous materials that Lender or the receiver deems necessary to comply with hazardous materials Laws or to render the property suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from loan proceeds any amount necessary to cure any monetary Event of Default;

H. Enter upon, take possession of, and manage the property, either in person, by agent, or by a receiver appointed by a court, and collect rents and other amounts specified in the assignment of rents in the deed of trust and apply them to operate the property or to pay off the loan or any advances made under the Loan Documents, as provided for by the deed of trust;

I. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the deed of trust;

J. With respect to defaults under hazardous materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

K. Pursue any other remedy allowed at law or in equity. Nothing in this Section is intended or shall be construed as precluding Lender from proceeding with a non-judicial foreclosure under the power of sale contained in the deed of trust in the Event of Default by Borrower.

11.4 RIGHT OF CONTEST

Notwithstanding the provisions of Section 11.2, Borrower will have the right to contest in good faith any claim, demand, levy or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest will be prosecuted diligently and in a manner not prejudicial to the Lender hereunder. Upon demand by the Lender, Borrower will make suitable provision by deposit of funds with the Lender or by bond or by title insurance or other assurance satisfactory to the Lender for the possibility that the contest will be unsuccessful. Such provision will be made five (5) days after demand therefor,

and, if made by deposit of funds with the Lender, the amount so deposited will be disbursed in accordance with the resolution of the contest either to Borrower or the adverse claimant.

11.4 BORROWER'S REMEDIES (Optional)

Upon the fault or failure of Lender to meet any of its obligations under the loan documents, Borrower may:

- A. Demand payment from Lender of any sums due Borrower;
- B. Bring an action in equitable relief seeking the specific performance by Lender of the terms and conditions of the loan documents; and
- C. Pursue any of the remedy allowed at law or in equity.

11.5 NONRECOURSE LOAN

Borrowers' obligations under this Agreement will be nonrecourse obligations of Borrower. Neither Borrower nor any of its general or limited partners shall have any personal liability for these obligations. Lenders' sole recourse under the Loan Documents will be exercise of its rights against the Project and any other security given for obligations under the Loan Documents.

ARTICLE 12. GENERAL PROVISIONS

12.1 TERMINATION CONDITIONS

A. It is expressly understood and agreed that the Lender will have the sole right to terminate this Agreement upon default by Borrower. Lender will give Borrower fifteen (15) days written notice of termination of the Agreement, following expiration of any period allowed for the cure under Section 11.2. The obligations of Borrower regarding Program Income in the HOME Note and CDBG Note may not be terminated prior to the expiration of their terms without written consent of Lender. All reports or accounts provided for herein with respect to a period within the term of this Agreement will be rendered whether or not falling due within the Agreement period.

B. The Lender reserves the right to terminate this Agreement upon fifteen (15) days written notification to Borrower under the following conditions:

1. Notification by HUD to the Lender that said Project is ineligible because of Project location, services provided, or any other reason cited by HUD in accordance with HOME regulations.
2. Notification by HUD to the Lender that said Project is not providing an adequate level of services to low income and minority people in accordance with HOME regulations.
3. Written notification from HUD to the Lender that the Project funds made available to the Lender are being curtailed, withdrawn, or otherwise restricted.

C. The Lender reserves the right to terminate this Agreement or to reduce the Agreement

compensation amount for convenience in accordance with 24 CFR 92.504(c)(13) and 24 CFR 85.44.

12.2 FLOOD DISASTER PROTECTION

This Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Use of any assistance provided under this Agreement for acquisition or construction in an area identified as having special flood hazards will be subject to the mandatory purchase of flood insurance in accordance with the requirements of Section 102(a) of said Act.

12.3 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (Applicable to Contracts and Subcontracts Which Exceed \$100,000)

Borrower will comply with and require each subcontractor to comply with all applicable standards of the Clean Air Act of 1970, the Clean Air Act of 1990, the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended, and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.

12.4 PROVISION OF THE HATCH ACT

Neither Borrower nor the Project funds provided therefor, nor the personnel employed in the administration of the Project will be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code.

12.5 LEAD-BASED PAINT

Any rehabilitation of residential structures with assistance provided under this Agreement will be made subject to the provisions for the elimination of lead-based paint hazards under 24 CFR Part 35, to the extent applicable. Borrower will comply with any applicable requirements of 24 CFR 92.355 for notification, inspection, testing, and abatement procedures concerning lead-based paint.

12.6 REAL PROPERTY ACQUISITION AND REHABILITATION AND DISPLACEMENT OF PERSONS AND BUSINESSES

Borrower will conduct any acquisition, rehabilitation, or demolition of the Property, and any negotiations for acquisition, rehabilitation, or demolition of the Property in compliance with 24 CFR 92.353, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and, if triggered by 24 CFR 92.353(e), Section 104(d) of the Housing and Community Development Act of 1974. Borrower will not cause either temporary or permanent involuntary displacement of persons or businesses. If Borrower causes the involuntary temporary or permanent displacement of any person or business as a result of the Project, it will comply with the Lender's plan to assist persons displaced by HOME Program or CDBG assisted activities, and Borrower will provide all notices, advisory assistance, relocation benefits, and replacement dwelling units as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 49 CFR 24. If triggered by 24 CFR 92.353(e), Borrower will also comply with Section 104(d) of the Housing and Community Development Act of 1974, and the implementing regulations at 24 CFR 570.606. Borrower hereby agrees to pay, and to indemnify the Lender from and against, any and all claims and liabilities for relocations benefits required by federal statutes and regulations in connection with activities undertaken pursuant to this Agreement.

12.7 LOBBYING RESTRICTIONS

Borrower agrees, to the best of its knowledge and belief:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal,

amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

C. It will require that the language of this section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly.

12.8 PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Agreement will be deemed to be inserted herein and the Agreement will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

12.9 SEVERABILITY

In any provision of the Loan Documents will be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion will be deemed severed from the Loan Documents and the remaining parts will remain in full force as though the invalid, illegal, or unenforceable portions had never been part of the Loan Documents.

12.10 INCORPORATION

The following Exhibits, all attached hereto, are hereby incorporated into this Agreement.

EXHIBIT A: Project Description

EXHIBIT B: Budget

EXHIBIT C: Financing Commitments

EXHIBIT D: Insurance Coverage

12.11 NO IMPAIRMENT OF LIEN

No violation or breach of the covenants, conditions, restrictions, provisions, or limitations contained in this Agreement will defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust recorded against the Property.

12.12 BORROWER'S WARRANTIES

Borrower represents and warrants: (1) that it has access to professional advice and support to the extent necessary to enable Borrower to fully comply with the terms of the Loan Documents, and to otherwise carry out the Project; (2) that it is duly organized, validly existing and in good standing under the laws of the State of California; (3) that it has the full power and authority to undertake the Project and to execute the Loan Documents; (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of Borrower; and (5) that Borrower will perform the necessary predevelopment tasks to enable construction of the Project to begin within thirty (30) days from the date of the construction loan closing.

12.13 PROJECT MONITORING AND EVALUATION

Except as otherwise provided for in this Agreement, Borrower shall maintain and submit records to Lender within ten (10) business days of Lender's request which clearly document Borrower's

performance under each requirement of the Loan Documents.

12.14 CONFLICTS OF INTEREST

Borrower shall exercise due diligence to ensure that: (1) the Lodi City Council, the Lodi Community Development Director, San Joaquin County's Community Development Director, or any member of the Board of Supervisors, or anyone related within the third degree to these parties; or (2) any member, officer, employee, or agent of Lender, or any immediate family member of such person, who, with respect to the Project, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter.

Borrower warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of Borrower who, with respect to the Project: (1) exercises any functions or responsibilities for Lender; (2) is in a position to participate in Lender's decision making process; or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this Project, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

12.15 GOVERNING LAW

The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

12.16 STATUTORY REFERENCES -

All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the County of San Joaquin shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

12.17 ATTORNEYS' FEES AND COSTS

In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

12.18 TIME

Time is of the essence in these Loan Documents.

12.19 CONSENTS AND APPROVALS

Except as expressly provided herein, any consent or approval of Lender or Borrower required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

12.20 NOTICES, DEMANDS AND COMMUNICATIONS

Formal notices, demands and communications between Borrower and Lender shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to Borrower and Lender as follows:

LENDER: SAN JOAQUIN COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT
1810 E. HAZELTON AVENUE
STOCKTON, CA 95205
ATTN: DIRECTOR

LENDER: CITY OF LODI
221 WEST PINE STREET
P.O. BOX 3006
LODI, CA 95241-1910
ATTN: DIRECTOR
C: CITY ATTORNEY

BORROWER: LODI HOTEL INVESTORS, A CALIFORNIA LIMITED PARTNERSHIP
1001 SIXTH STREET, SUITE 200
SACRAMENTO, CA 95814

12.21 BINDING UPON SUCCESSORS

All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators; executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Agreement by Borrower without Lender's consent by the Board of Supervisors.

12.22 RELATIONSHIP OF PARTIES

The relationship of Borrower and Lender for this Project under this Agreement is and at all times shall remain solely that of a debtor and creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Lender neither undertakes nor assumes any responsibility or duty to Borrower (except as provided for herein) or any third party with respect to the Project, the property, or the loans. Except as Lender may specify in writing, Borrower shall have no authority to act as an agent of Lender or to bind Lender to any obligation.

12.23 ASSIGNMENT AND ASSUMPTION

Borrower shall not assign any of its interests under this Agreement or the Loan Documents to any

other party, except as specifically permitted under the terms of the Loan Documents, without the prior written consent of Lender. Any unauthorized assignment shall be void.

12.24 WAIVER

Any waiver by Lender of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by Lender to take action on any breach or default of Borrower or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to Borrower to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by Lender to any act or omission by Borrower shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for Lender's written consent to future waivers.

12.25 INTEGRATION

The Agreement and the other Loan Documents, including Exhibits, executed by Borrower for the property, contain the entire agreement of the parties and supersede any and all prior negotiations.

12.26 OTHER AGREEMENTS

Borrower represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. Borrower shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by Lender in writing.

12.27 AMENDMENTS AND MODIFICATIONS

Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both Borrower and Lender.

12.28 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS

The Lender shall not be personally liable to Borrower for any obligation created under the terms of this Agreement except in the case of actual fraud, willful misconduct or sole gross negligence by such person.

12.29 RECORDING AND FILING

The Lender and owner shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of San Joaquin.

12.30 AMENDMENTS

This Agreement may be amended only if approved by the Board of Supervisors and the City of Lodi only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of San Joaquin, California.

12.31 NOTICE

All notices given or certificates delivered under this Agreement shall be deemed received on the delivery or refusal date shown on the delivery receipt, if: (1) personally delivered by a commercial service which furnishes signed receipts of delivery; or (2) mailed by certified mail, return receipt requested, postage prepaid, addressed as shown on the signature page. Any of the parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

"LENDER"

APPROVED AS TO CONTENT AND
RECOMMENDED FOR APPROVAL:

COUNTY OF SAN JOAQUIN,
a political subdivision of the
State of California

CHET DAVISSON, Director
Community Development Department

ROBERT J. CABRAL, Chairman
San Joaquin County, California

APPROVED AS TO FORM:

TERRENCE R. DERMODY
County Counsel

ATTEST:
LOIS M. SAHYOUN
Clerk of the Board of Supervisors
County of San Joaquin
State of California

Deputy County Counsel

Deputy Clerk

"LENDER"

CITY OF LODI, a municipal corporation

ATTEST:

H. DIXON FLYNN
City Manager

JENNIFER M. PERRIN
City Clerk

APPROVED AS TO FORM:

RANDALL A. HAYS
City Attorney

"BORROWER"

LODI HOTEL INVESTORS, A California Limited Partnership

By: _____

DANIELS C. LOGUE
General Partner

By: _____

CYRUS YOUSSEF
General Partner

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

"LENDER"

APPROVED AS TO CONTENT AND
RECOMMENDED FOR APPROVAL:

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Clerk of the Board of Supervisors
County of San Joaquin
State of California

Deputy County Counsel

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"LENDER"

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RANDALL A. HAYS
City Attorney

"BORROWER"

LODI HOTEL INVESTORS, A California Limited Partnership

By: _____

DANIELS C. LOGUE
General Partner

By: _____

CYRUS YOUSSEF
General Partner

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Sacramento
On May 24, 1996 before me, Kathryn Boschee Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Daniels C. Logue and Cyrus Youssefi
Name(s) of Signer(s)

☒ personally known to me – OR – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Kathryn Boschee
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

State of California

County of San Joaquin

On _____ before me, _____
DATE NAME, TITLE OR OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared _____
NAME(S) OF SIGNER(S)



personally known to me - **OR** -



proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

State of California

County of San Joaquin

On _____ before me, _____
DATE NAME, TITLE OR OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared _____
NAME(S) OF SIGNER(S)



personally known to me - **OR** -



proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Exhibit A
Property Description

ORDER NO. 129336/CA [1ST AMEND]

Legal Description

That certain Real Property situated in the State of California, County of San Joaquin, City of Lodi, described as follows:

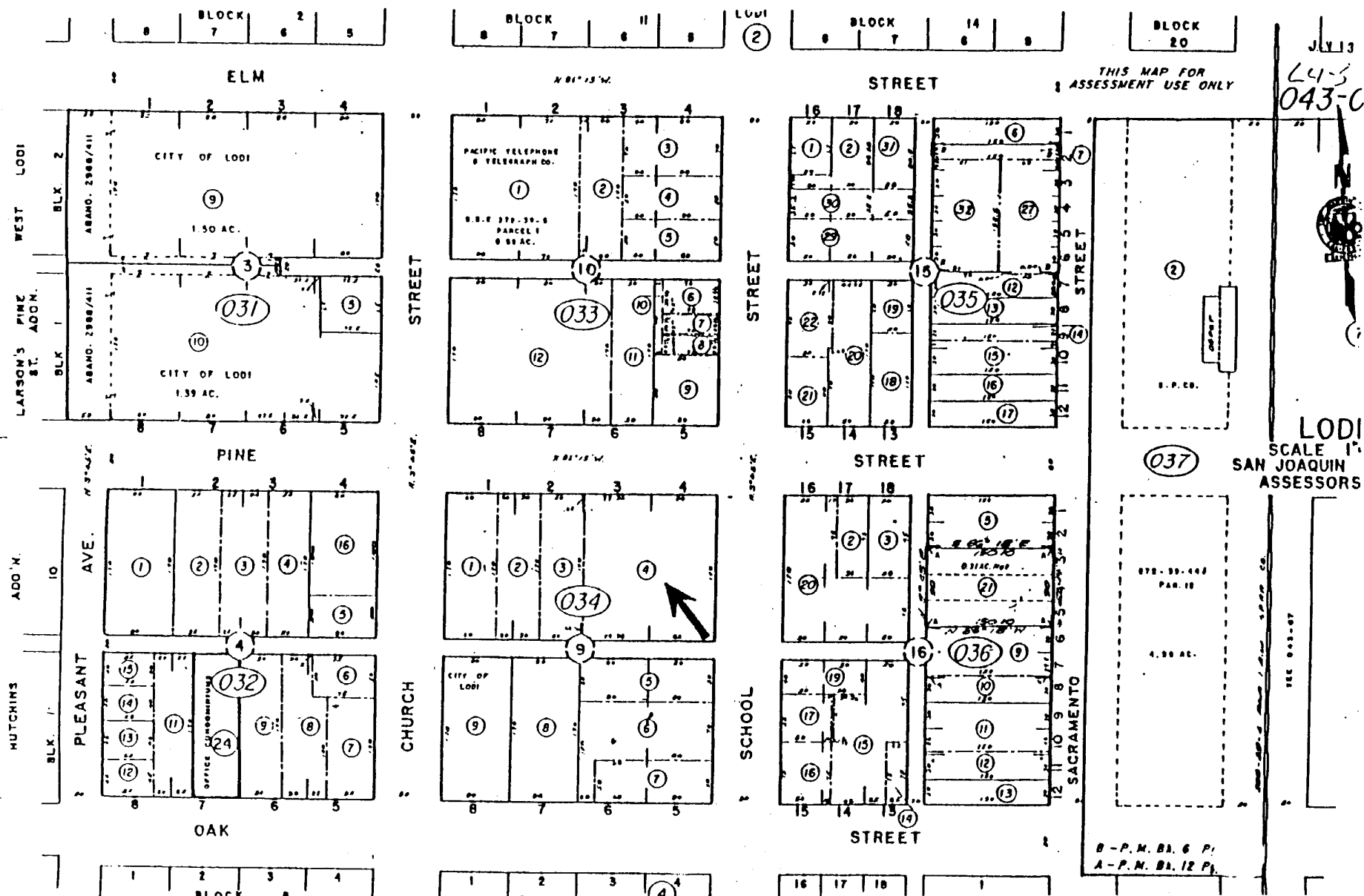
LOTS 3 AND 4 IN BLOCK 9 AS SHOWN UPON MAP ENTITLED MOKELUMNE CITY OF LODI, FILED FOR RECORD AUGUST 25, 1869 IN BOOK OF MAPS AND PLATS, VOL. 2, PAGE 12, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THAT PORTION OF LOT 3 AS DESCRIBED IN DEED TO G. GRAFFIGNA, DATED APRIL 26, 1937 AND RECORDED JUNE 1, 1937 IN BOOK OF OFFICIAL RECORDS, VOL. 582, PAGE 83, SAN JOAQUIN COUNTY RECORDS.

caw

FIRST AMERICAN TITLE

A-2



PART VIII - PROJECT COSTS

Exhibit B
Budget

Lodi Hotel

12/10/95

A. Project Costs

State estimated or actual costs in the first column. All estimated or actual costs includable in eligible basis are to be repeated in the eligible basis column. Be sure all residential project costs are reflected below. All commercial space costs must be on the separate line provided on page 17.

	Actual or Est. Project Costs	70% PVC Rate Eligible Basis	30% PVC Rate Eligible Basis
<i>Land Costs</i>			
Land Cost	775.000	XXXXXXXXXXXX	XXXXXXXXXXXX
Legal/Broker Fees	0	XXXXXXXXXXXX	XXXXXXXXXXXX
Off-Site Improvements	0	XXXXXXXXXXXX	XXXXXXXXXXXX
Demolition	0	XXXXXXXXXXXX	XXXXXXXXXXXX
Total Land Costs	\$775.000	XXXXXXXXXXXX	XXXXXXXXXXXX
Total Acquisition Costs*	\$0	XXXXXXXXXXXX	
<i>New Construction</i>			
Site Work	0	0	
Structures	2,450.877	2,450.877	
General Requirements**	147.053	147.053	
Contractor Overhead**	49.018	49.018	
Contractor Profit**	147.053	147.053	
Total New Construction Costs	\$2,794.000	\$2,794.000	
<i>Rehabilitation</i>			
Site Work	0	0	
Structures	0	0	
General Requirements**	0	0	
Contractor Overhead**	0	0	
Contractor Profit**	0	0	
Total Rehabilitation Costs	\$0	\$0	
<i>Architectural Fees</i>			
Design	75.000	75.000	
Supervision	20.000	20.000	
Total Architectural Costs	\$95.000	\$95.000	
Total Survey and Engineering Costs	\$27.000	\$27.000	
<i>Construction Interest and Fees</i>			
Construction Loan Interest	63.000	63.000	
Bridge Loan Interest	0	0	
Origination Fee	30.000	30.000	
Credit Enhancement And Application Fee	0	0	
Bond Premium	0	0	
Taxes	17.800	17.800	
Insurance	15.000	15.000	
Title And Recording	16.000	16.000	
Total Construction Interest And Fees Costs	\$141.800	\$141.800	

*The lesser amount of the purchase price or appraised value

**The total for general requirements, contractor overhead, and contractor profit cannot exceed 14% of the total of site work and structures. Further restrictions apply to HUD Assisted projects. See the Subsidy Layering Section of the QAP.

A. Project Costs (Continued)

	Actual or Est. Project Costs	70% PVC Rate Eligible Basis	30% PVC Rate Eligible Basis
<i>Permanent Financing</i>			
Loan Origination Fee	30,000	XXXXXXXXXXXX	XXXXXXXXXXXX
Credit Enhancement & Application Fee	0	XXXXXXXXXXXX	XXXXXXXXXXXX
Title and Recording	0	XXXXXXXXXXXX	XXXXXXXXXXXX
Other (lock-in fee)	0	0	
Total Permanent Financing Costs	\$30,000	\$0	
<i>Legal Fees</i>			
Lender Legal Costs Paid by Applicant	10,000	10,000	
Other (Specify) <u>Borrower Attorney</u>	20,000	20,000	
Total Attorney Costs	\$30,000	\$30,000	
(NOT TO INCLUDE REAL ESTATE OR SYNDICATION)			
Total Appraisal Costs	\$8,500	\$8,500	
<i>Reserves</i>			
Rent Reserves	40,000	XXXXXXXXXXXX	XXXXXXXXXXXX
Other (Specify) <u>Oper. Reserves</u>	0	XXXXXXXXXXXX	XXXXXXXXXXXX
Total Rent Reserve Costs	\$40,000	XXXXXXXXXXXX	XXXXXXXXXXXX
Total Construction Contingency Costs	\$125,000	\$125,000	
<i>Other</i>			
TCAC App./Alloc./Monitoring fees	42,260	XXXXXXXXXXXX	XXXXXXXXXXXX
Environmental Audit	9,000	9,000	
Local Permit Fees	25,000	25,000	
Marketing	20,000	XXXXXXXXXXXX	XXXXXXXXXXXX
Relocation Expenses	0	XXXXXXXXXXXX	XXXXXXXXXXXX
Furnishings	157,100	157,100	
Other (specify) <u>Feasibility Study</u>	3,000	3,000	
Other (specify) <u>CPA Certification</u>	5,000	5,000	
Total Other Costs	\$261,360	\$199,100	
Sub-Total Residential Costs	\$4,327,660	\$3,420,400	

(Continued on next page)

A. Project Costs (Continued)

	Actual or Est. Project Costs	70% PVC Rate Eligible Basis	30% PVC Rate Eligible Basis
<i>Developer Costs</i>			
Developer Overhead/Profit	513.060	513.060	
Consultant/Processing Agent Fees	0	0	
Project Administration	0	0	
Other (specify) _____	0	0	
Total Developer Costs*	\$513.060	\$513.060	
Total Residential Costs	\$4,840,720	\$3,933,460	
Total Commercial Space Costs	\$0	XXXXXXXXXXXX	XXXXXXXXXXXX
TOTAL PROJECT AND BASIS COSTS	\$4,840,720	\$3,933,460	

SYNDICATION EXPENSES ARE NOT TO BE INCLUDED IN THE TOTAL PROJECT COSTS

*There is a limit on the amount of total developer fee allowed in project cost. The fee for new construction and rehabilitation cannot exceed the lower of: 15% of unadjusted eligible basis (5% for acquisition basis); 15% of Total Development Cost; or \$1.2 million. The basis for the fee may include costs financed with grant proceeds or below-market federal funds. The fee limit is calculated before the addition of the developer fee and any High Cost Area Adjustment.

The developer fee includes all tax credit consultant fees, processing agent fees, developer overhead and profit, compensation for any construction management oversight provided by the developer, the value of any personal guarantees (but not real costs actually incurred) required by lenders or investors and a portion of any reserves determined to be in excess of industry norms.

Exhibit C

Financing Commitments:

California Tax Credit Reservation of not less than \$4,582,498

Equity Funding in an amount not less than \$2,566,198

Exhibit D
Insurance Requirement

INSURANCE REQUIREMENTS

As a precondition to making the Loan, Borrower shall obtain the following insurance coverage, and shall maintain such coverage in full force and effect during construction of the Project: comprehensive general liability insurance policy affording coverage for bodily injury, and property damage in the combined general aggregate limit of Two Million Dollars (\$2,000,000). Before Loan disbursement and issuance of a notice to proceed, Borrower shall deliver to Lender certificate(s) of insurance, or a binder followed within 30 days by a certificate of insurance, evidencing the required coverage.

1. General Conditions

During the term of this Agreement and without limiting the Borrower's indemnification of the City or the Agency, the Borrower shall provide and maintain at its own expense insurance having the limits customarily carried and actually arranged by the Borrower but not less than the amounts and types listed below covering its operations hereunder. All insurance shall be subject to the following conditions:

a. Additional Insured/Loss Payee

The City, the Agency, their boards, officers, agents and employees shall be included as additional insureds by separate endorsement in all liability insurance policies except: Workers' Compensation/Employer's Liability and second-party Legal Liability coverages (such as Fire Legal) and Owners and Contractors Protective Liability, in which latter case the City and the Agency shall be the named insureds. The City and the Agency shall be named loss payees as their interests may appear in all required property, fidelity or surety coverages.

b. Insurance Requirements

All insurance required hereunder shall conform to City and the Agency requirements established by charter, ordinance or policy and shall be filed with the City Finance Department for review.

During the period of construction, Borrower must obtain or cause to be obtained a builder's risk or equivalent policy covering damage or loss up to the value of labor and

materials and naming the City and the Agency as loss payees as their interests may appear.

After completion of the Project, Borrower must cause to be issued a physical damage insurance policy covering the replacement value of the property as mutually agreed between Borrower and insurer with a lender's loss payable endorsement listing the City, the Agency and Borrower as the loss payees as their interests may appear. This policy must remain in effect throughout the term of the Loan.

c. Primary Insurance

Such insurance shall be primary with respect to any insurance maintained by City and the Agency and shall not call on the City's or the Agency's insurance for contributions.

d. Admitted Carrier/Licensed California Broker

Such insurance shall be obtained from brokers or carriers licensed and authorized to transact insurance business in California and approved by the City and Agency.

e. 30-Day Notice

With respect to the interests of City and Agency, such insurance shall not be canceled, or materially reduced in coverage or limits, or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail - return receipt, courier or telegram) has been given to the City and the Agency by the carrier(s).

f. Prior Approval

Evidence of insurance shall be submitted to and approved by the City Finance Department and the City Attorney prior to commencement of any work or tenancy under this Agreement.

g. Acceptable Evidence

The appropriate City and the Agency special endorsement forms are the preferred form of evidence of insurance. Alternatively, Borrower may submit two (2) certified copies of the full policy or other evidence acceptable to the City Attorney containing language which complies with subparagraphs (a) through (f) above. With respect to liability insurance, either a signed copy of the policy declaration page or a letter from Borrower's insurance broker certifying coverage, together with a 30-day cancellation notice endorsement in favor

of the City and Agency as specified in subparagraph "e" of this section will satisfy this requirement.

h. Severability of Interest

Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whom claim or suit is brought. The inclusion of any person or organization, as an insured, shall not affect any right which such person or organization would have as a claimant if not so included.

i. Renewal

Once the insurance has been approved by the City and the Agency, evidence of renewal of an expiring policy may be submitted on a manually signed certificate of insurance. If the policy or carrier has changed, however, new evidence as specified in paragraphs (a) through (h) above, must be submitted.

j. Proceeds

All proceeds of insurance with respect to loss or damage to the Project during the term of the Loan shall be payable, under the provisions of the policy of insurance, jointly to the Borrower, the construction lender[s] and the Lender, and said proceeds shall constitute a trust fund to be used for the restoration, repair or rebuilding of the Project in accordance with plans and specifications approved in writing by the Lender. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, such proceeds shall be applied first to repay the construction lenders, and second to repay the Loan. In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part thereof, the Borrower shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the Loan in balance and rebuild the Project in a manner that provides adequate security to the Lender for repayment of the Loan or if such proceeds are insufficient then the Borrower shall have funded any deficiency, (b) the Lender shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the Loan. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that

provides adequate security to the Lender for repayment of the remaining balance of the Loan.

2. Worker's Compensation

By signing this Agreement, the Borrower hereby certifies that it is aware of the provisions of Section 3700, et seq., of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that code, and that it will comply and require the Borrower to comply with such provisions before commencing the performance of the work of this Agreement.

3. Aggregate Limits/Blanket Coverage

If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of the Borrower not related to this Agreement, the Borrower shall give the Lender prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in Borrower's best judgment may diminish the protection such insurance affords Lender. Further, Borrower shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. The Lender may specify a minimum acceptable aggregate for each line of coverage required.

4. Modification of Coverage

Upon advice from the City Finance Department, the Lender reserve the right at any time during the term of this Agreement to change the amounts and types of insurance required hereunder by giving the Borrower forty-five (45) days advance written notice of such change. If such change should result in substantial additional cost to Borrower, the Lender agree to negotiate additional compensation proportional to the increased benefit to the Lender.

5. Failure to Procure Insurance

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by the Lender. Non-availability or non-affordability must be documented by a letter from Borrower's insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, Borrower's failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which the Lender may immediately suspend or terminate this Agreement or, at either of their discretion, procure or renew such insurance to protect the Lender's interests and pay any and all premiums in connection therewith, and all monies so paid by the Lender shall be repaid by the Borrower to the Lender upon demand or it may offset the cost of the premiums against any monies due to the Borrower from the Lender.

6. Underlying Insurance

Borrower shall be responsible for requiring indemnification and insurance as it deems appropriate from its employees receiving mileage allowance and from its consultants, agents and subcontractors, if any, to protect Borrower's, and Lender's interests and for ensuring that such persons comply with any applicable insurance statutes. Borrower is encouraged to seek professional advice in this regard.

Deed of Trust & Security Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

San Joaquin County
Community Development Department
1810 E. Hazelton Avenue
Stockton, Ca 95205
Attention: Neighborhood Preservation Division

DEED OF TRUST AND SECURITY AGREEMENT

THIS DEED OF TRUST AND SECURITY AGREEMENT (the "Deed of Trust") is made as of this ____ day of _____, 1996, by and among Lodi Hotel Investors, a California Limited Partnership (the "Trustor"), and the County of San Joaquin (the "Beneficiary") and the City of Lodi, a municipal corporation organized under the laws of the State of California (the "Trustee").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in the City of Lodi, County of San Joaquin, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including without limiting the generality of the foregoing, all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by and any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Paragraph 4.1 herein; and

TOGETHER WITH all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner.

All of the foregoing, together with the Property, is herein referred to as the "Security". To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING:

(a) Payment of a just indebtedness of Trustor to the City of Lodi in the principal amount of Six Hundred Ninety Thousand, fifteen dollars (\$690,015) as set forth in the Regulatory and Loan Agreement (defined in Section 1.6 below); payment of a just indebtedness of Trustor to the City of Lodi in the principal amount of Three Hundred Ninety Three Thousand, Nine Hundred Eighty Five Dollars (\$393,985) as set forth in the Regulatory and Loan Agreement (defined in Section 1.6 below) and the CDBG Note (defined in Section 1.1 below) until paid or cancelled. Said principal and other payments shall be due and payable as provided in the HOME Note, the CDBG Note (collectively, the "Note"). The Regulatory and Loan Agreements, the HOME Note, the CDBG Note and all their terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced; and

(b) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

(c) Performance of every obligation, covenant or agreement of Trustor contained herein and in the Regulatory and Loan Agreement and the Regulatory agreement (defined in Section 1.6 below).

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR
COVENANTS AND AGREES:

ARTICLE 1 DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

Section 1.1 The term "CDBG Note" means that certain promissory note of even date herewith executed by the Trustor in the original principal amount of Three Hundred Ninety Three Thousand, Nine Hundred Eighty Five Dollars (\$393,985), the payment of which is secured by this Deed of Trust.

Section 1.2 The term "Debt Instruments" means any other debt, loan, regulatory agreement or security instruments relating to the Property.

Section 1.3 The term "Home Note" means that certain promissory note of even date herewith executed by the Trustor in the original principal amount of Six Hundred Ninety Thousand, Fifteen Dollars (\$690,015), the payment of which is secured by this Deed of Trust.

Section 1.4 The term "Note" means collectively, the CDBG Note and the Home Note.

Section 1.5 The term "Principal and Interest" means the aggregate of the principal and interest amounts required to be paid under the Home Note, and the CDBG Note.

Section 1.6 The term "Regulatory and Loan Agreement" means that certain Regulatory and Loan Agreements between Trustor and Beneficiary, dated as of June ___, 1996, providing, among other things, for the loan of acquisition, predevelopment and construction funds in the amount of the Note for the rehabilitation of the improvements to the Property.

Article 2
MAINTENANCE AND MODIFICATION OF
THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor

The Trustor agrees that at all times prior to full payment of the sums owed under the Note, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security or any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security, the Regulatory and Loan Agreement, the Note; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of San Joaquin County, a surety bond in and amount one and one half (1- 1/2) times the amount of such claim item to protect against a claim of lien.

Section 2.2 Granting of Easements

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law. As to these exceptions, Beneficiary will grant and/or direct the Trustee to grant such easements.

ARTICLE 3
TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges

Trustor shall pay, or cause to be paid, at least fifteen (15) days prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefore by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, shall become an additional obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance

Trustor agrees to provide insurance as may reasonably be required by the Beneficiary to insure the Property and improvements thereon against fires and other perils during the course of construction and following completion. Such insurance shall be maintained at all times until all amounts secured by this Deed of Trust have been paid and all other obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to the Beneficiary's receipt of the entire Principal and Interest and all amounts secured by this Deed of Trust. All such insurance policies shall name the Beneficiary as the loss payee.

Section 3.3 Advances

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Regulatory and Loan Agreement or any Debt Instruments, the Beneficiary, after at least seven (7) days prior notice to Trustor, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest for the date of the advance at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

ARTICLE 4 DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages

All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or in any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property ("Funds") are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust.

ARTICLE 5
AGREEMENTS AFFECTING THE PROPERTY; FURTHER ASSURANCES;
PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1 Other Agreements Affecting the Property

The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Regulatory and Loan Agreement, the Note, the Debt Instruments and any other agreement of any nature whatsoever now or hereafter involving or affecting the Property or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses

In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

Section 5.3 Payment of Principal and Interest

The Trustor shall pay to the Beneficiary the Principal and Interest, and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4 Personal Property

To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code.

Section 5.5 Financing Statement

Upon request of the Beneficiary, the Trustor shall execute and deliver to the Beneficiary such Financing Statements pursuant to the appropriate statutes, and any other documents or

instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such Financing Statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Property

The Trustor agrees and covenants to operate the Property (and, in case of a transfer of a portion of the Property subject to this Deed of Trust, the transferee shall operate such portion of the Property) in full compliance with the Regulatory and Loan Agreement and the Debt Instruments.

Section 5.7 Inspection of the Property

If in the reasonable opinion of Beneficiary, the Property may be impaired, the Trustor covenants and agrees that the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Property, during regular business hours, without prior notice. Inspection of the interior of an occupied unit is subject to any notice as and if prescribed by law.

Section 5.8 Nondiscrimination

The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual preference or orientation, marital status, national origin, ancestry, disability, medical condition, mental condition, AIDS acquired or perceived, familial status, pregnancy, childbirth or related medical condition, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenants shall run with the land.

Section 5.9 Hazardous materials

a. covenants

1. Hazardous Materials Activities. The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that Trustor, its heirs, executors, administrators and assigns shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any oil, petroleum product, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances", "hazardous wastes", "hazardous materials", or "toxic substances" under applicable environmental laws, ordinances or regulations (collectively, "Hazardous Materials").

2. Hazardous Materials Laws. The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that Trustor, its heirs, executors, administrators and assigns shall comply and cause the Property and any improvements thereon to comply with all laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation, those relating to soil and groundwater conditions.

3. Notices. The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that Trustor, its heirs, executors, administrators and assigns shall immediately notify the Beneficiary in writing of: (a) the discovery of any Hazardous Materials on or under the Property; (b) any knowledge by Trustor that the Property does not comply with any Hazardous Materials Laws; (c) any claims or actions pending or threatened against the Trustor or the Property by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws ("Hazardous Materials Claims"); and (d) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be designated as "border zone property" under the provisions of California Health and Safety Code Sections 25220, et seq., or any regulation adopted in accordance therewith.

4. Remedial Action. In response to the presence of any Hazardous Materials on, under or abut the Property, Trustor shall immediately take, at Trustor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials Claims.

b. Legal Effect of Section. Trustor and Beneficiary agree that:

1. This Section 5.9 is intended as Beneficiary's written request for information (and Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure §725.5; and

2. Each representation and warranty in this Section 5.9 (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by Beneficiary and Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure §736.

c. Environmental Indemnity. Trustor shall defend, indemnify, and hold the Beneficiary free and harmless against any claims, demands, administrative actions, litigation, liabilities, losses, damages, response cost, and penalties, including all costs of legal proceedings and attorney's fees, that the Beneficiary may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not Trustor knew of same) of any Hazardous Materials occurring after the date of this Deed of Trust.

ARTICLE 6 EVENTS OF DEFAULT AND REMEDIES

Section 6.1 Events of Default

The following shall constitute Events of Default: (1) failure to make any payment when due to Beneficiary under the Note; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Regulatory and Loan Agreement, including, without limitation, the provisions concerning nondiscrimination and continuance of such failure after any applicable cure periods; or (3) failure to make any payment or perform any of Trustor's other covenants, agreements, or obligations under any other Debt Instruments or regulatory agreements secured by the Property which default shall not be cured within the times and in the manner provided therein.

Section 6.2 Acceleration of Maturity

If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and the unpaid Principal and Interest of the Note shall immediately become due and payable without notice or demand which are hereby expressly waived, upon written notice by the Beneficiary to the Trustor and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 6.3 The Beneficiary's Right to Enter and Take Possession

If an Event of Default shall have occurred and be continuing, the Beneficiary may:

- a. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Default hereunder or invalidate any act done in response to such Event of Default or pursuant to such Notice of Default and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any event of Default, including the right to exercise the power of sale;
- b. Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;
- c. Deliver to Trustee a written declaration of default and demand for sale, and a written Notice of Default and election to cause Trustor's interest in the Security to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of San Joaquin County; or
- d. Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

Section 6.4 Foreclosure By Power of Sale

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the unpaid Principal and Interest amount of the Note is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

a. Upon receipt of such notice from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after said Notice of Sale having been given as required by law, sell the Property, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g (b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

b. After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (1) the unpaid Principal and Interest amount of the Note; (2) all other sums then secured hereby; and (3) the remainder, if any, to Trustor.

c. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 6.5 Receiver

If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or part thereof), and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 6.6 Remedies Cumulative

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 6.7 No Waiver

a. No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. No consent or waiver, expressed or implied, by the Beneficiary to or any breach by the Trustor in the performance of the obligations hereunder shall be deemed or construed to be a consent to or waiver of obligations of the Trustor hereunder. Failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

b. If the Beneficiary (1) grants forbearance or an extension of time for any sums secured hereby, (2) takes other or additional security or the payment of any sums secured hereby, (3) waives or does not exercise any right granted in the Loan Agreement, the Note or the Regulatory Agreement, (4) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Agreement, the Note or the Regulatory Agreement, (5) consents to the granting of any easement or other right affecting the Security, or (6) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

Section 6.8 Suits to Protect the Security

The Beneficiary shall have power to (1) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (2) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (3) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 6.9 Trustee May File Proof of Claim

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

Section 6.10 Waiver

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, and all other notices or demands under the California Commercial Code, notice of costs, expenses, or losses and interest thereon, notice of interest on interest on interest and late charges, and diligence in taking any action to collect any sums owing under the Note or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 7
MISCELLANEOUS

Section 7.1 Amendments

This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 7.2 Reconveyance By Trustee

Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 7.3 Notices

If at any time after the execution of this Deed of Trust it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the certified United States mail, return receipt requested, postage prepaid and (1) if intended for Beneficiary shall be addressed to:

San Joaquin County
Community Development Department
1810 E. Hazelton Avenue
Stockton, CA 95205
Attention: Neighborhood Preservation Division

and (2) if intended for Trustor shall be address to:

City of Lodi
Community Development Department
City Hall, 221 Pine Street, P.O. Box 3006
Lodi, CA 95241-1910
Attention: Director
cc: City Attorney

Any notice, demand or communications shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

Section 7.4 Successors and Joint Trustors

Where an obligation is created herein binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor shall be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

Section 7.5 Captions

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not part of this Deed of Trust.

Section 7.6 Invalidity of Certain Provisions

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 7.7 Governing Law

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 7.8 Gender and Number

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 7.9 Deed of Trust, Mortgage

Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to mortgage.

Section 7.10 Actions

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 7.11 Substitution of Trustee

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 7.12 Statute of Limitations

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 7.13 Nonrecourse Obligation

Except as expressly provided in the second paragraph of this Section 7.13, Trustor shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Note secured by this Deed of Trust or the performance of the covenants of the Trustor under this Deed of Trust. The sole recourse of Beneficiary with respect to the principal of, or interest on, the Note and defaults by Trustor in the performance of its covenants under this Deed of Trust shall be to the property securing the indebtedness evidenced by the Note. No judgment, or execution thereon, entered in any action, legal or equitable, on the Note or this Deed of Trust shall be enforced personally against Trustor, but shall be enforced only against the property described in this Deed of Trust and such other further security as, from time to time, may be hypothecated for the Note; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of Beneficiary of, or (b) be deemed in any way to impair the right of Beneficiary to assert the unpaid principal amount of the Note as demand or money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note and the performance of Trustor's obligations under this Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve the Trustor of liability for (1) fraud or willful misrepresentation; (2) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (3) the fair market value of any personal property or fixtures removed or disposed of by Trustor other than in accordance with this Deed of Trust; (4) the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; (5) Trustor's indemnification obligations under the Loan Agreement or this Deed of Trust; (6) payment to Beneficiary any rental income or other income arising with respect to the Property received by the Trustor after the Beneficiary has given notice to the Trustor of notice of the occurrence of an Event of Default, other than those customarily incurred by the lender in realizing upon its lien in an uncontested for closure sale after an undisputed default.

Section 7.14 Conflicts

If any term or provision of this Deed of Trust conflicts with any term of provision of the Loan Agreement, the term or provision of the Loan Agreement shall control to the extent of such conflict.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

"Trustee"

APPROVED AS TO CONTENT AND
RECOMMENDED FOR APPROVAL:

COUNTY OF SAN JOAQUIN,
a political subdivision of the
State of California

CHET DAVISSON, Director
Community Development Department

ROBERT J. CABRAL, Chairman
San Joaquin County, California

APPROVED AS TO FORM:

TERRENCE R. DERMODY
County Counsel

ATTEST:
LOIS M. SAHYOUN
Clerk of the Board of Supervisors
County of San Joaquin
State of California

Deputy County Counsel

Deputy Clerk

"Trustee"

CITY OF LODI, a municipal corporation

ATTEST:

H. DIXON FLYNN
City Manager

JENNIFER M. PERRIN
City Clerk

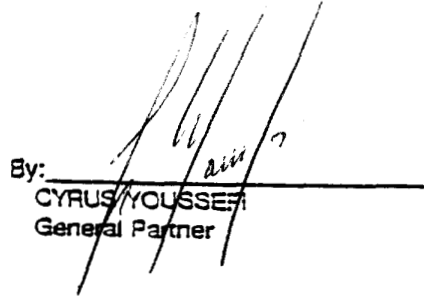
APPROVED AS TO FORM:

RANDALL A. HAYS
City Attorney

"Trustor"

LODI HOTEL INVESTORS, A California Limited Partnership

By: 
DANIELS C. LOGUE
General Partner

By: 
CYRUS YOUSSEF
General Partner

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

"Trustee"

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RECOMMENDED FOR APPROVAL:

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LODI HOTEL INVESTORS, A California Limited Partnership

By: 
DANIELS C. LOGUE
General Partner

By: 
CYRUS YOUSSEF
General Partner

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento

On May 24, 1996 before me, Kathryn Boschee Notary Public

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Daniel C. Lague and Lynne Goussier

Name(s) of Signer(s)

☒ personally known to me – **OR** – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Kathryn Boschee
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:

***PROMISSORY NOTE SECURED BY
DEED OF TRUST***

CDBG PROGRAM

PROMISSORY NOTE SECURED BY DEED OF TRUST
(CDBG PROGRAM)

Lodi, California

June __, 1996

FOR VALUE RECEIVED, Lodi Hotel Investors, a California Limited Partnership (the "Borrower"), having its office at 1001 Sixth Street, Suite 200, Sacramento, Ca 95814 hereby promises to pay the County of San Joaquin (the "County"), or order, a principal amount of Three Hundred Ninety Three Thousand, Nine Hundred Eighty Five Dollars (\$393,985) advanced on behalf of Borrower by the County pursuant to the Regulatory and Loan Agreement dated June __, 1996, among Borrower, the City of Lodi (the "City") and the County, plus interest as set forth below.

Borrower shall make payments of principal and interest, at the rates, in the amounts, and at the times provided below.

1. Purpose. This Note evidences the obligation of Borrower to repay funds loaned to and advanced on behalf of Borrower by the County to pay certain costs in connection with the rehabilitation of affordable seniors housing development (the "Project") on property located in Lodi, California, as more particularly described in the Regulatory and Loan Agreement (the "Property"). All capitalized terms used but not defined in this Note shall have the meanings set forth in the Regulatory and Loan Agreement. Borrower shall not make any sale, assignment, conveyance, or transfer in any other form of the Project or the Property, or any part thereof or interest therein without the express consent of the City and County as provided in the Regulatory and Loan Agreement.

City and County

Borrower has also executed a promissory note in the amount of \$960,015 dated June __, 1996 in favor of the City (the "HOME Note") as referenced in the Regulatory and Loan Agreement, which is also secured by the Deed of Trust described in Section 3. Said documents are public records on file with the City Clerk and the provisions of said documents are incorporated by this reference.

2. Interest and Payment Terms.

a. Interest. Simple interest shall be computed on the outstanding principal balance at a rate of six and one half percent (3%) annually, which shall accrue to the extent not currently paid pursuant to subsection b.

b. Payment of Principal and Interest. Principal and interest payments shall be repaid from Net Annual Cash Flow from the Project. Net Annual Cash Flow shall be defined as all income residential and commercial (including, without limitation, Section 8 housing

assistance payments and laundry income) from the Project less (i) a reasonable amount to be approved by the City and County, actually expended for the following Project costs: operating expenses such as administration, management, salaries, utilities operation, maintenance, taxes, license insurance and replacement/operating reserves; and less (ii) the amounts of debt service on the first deed of trust approved pursuant to Section 5.12 of the Regulatory and Loan Agreement; and less (iii) a partnership cash flow to the extent available up to the amount as needed to provide a debt service ratio of 1 to 1:15 on first Deed of Trust Loan per year, any unpaid amounts shall not accrue and not be payable in future years; and less (iv) principal and interest on the CDBG Note; and less (v) principal and interest on the HOME Note. Any current interest not currently payable pursuant to this Subsection b. shall accrue and be paid when sufficient income is available as set-forth in this subsection b. Payments, if any, shall be due on June 1st of each year, commencing with the year first following the calendar year in which the first housing unit on the Property is placed in service.

c. Statement. Borrower shall submit to the City and County annually on June 1st a statement of the basis for calculation of the amount of the payment or nonpayment. An annual "audited financial statement" for the Project, prepared by a certified public accountant approved by the City and County, shall accompany each such statement, together with the annual tax return of Borrower.

d. Application of Payments. Payments shall be applied first to accrued interest, next to current interest and then to the outstanding principal balance.

e. Term. Notwithstanding any other provision of this Note, principal and interest payable pursuant to this Note shall be fully repaid within thirty (30) years.

3. Deed of Trust. This Note is secured by the Deed of Trust with Assignment of Rents (the "Deed of Trust") of even date herewith which shall be recorded on the Property in the Official Records of the County of San Joaquin.

4. Late Charge. Payments not made pursuant to Section 2(c) within thirty (30) days of the due date shall be considered delinquent. The Borrower acknowledges that late payment of amounts owing under this Note will cause the County to incur costs not contemplated by this Note, the exact amount of such costs being difficult and impractical to assess. Such costs include without limitation, processing and accounting charges. Therefore, if any payment under this Note is not received within thirty (30) days of the date due, the Borrower agrees to pay to the County an additional amount of four percent (4%) of the payment due as a late charge, payment of the late charge shall not be subject to the provisions of section 2.b. related to Net Annual Cash Flow. The parties agree that the late charge represents a reasonable sum considering all the circumstances existing at the date of the execution of this Note and represents a fair and reasonable estimate of the costs the County would incur by reason of late payment and that proof of actual damages would be costly and inconvenient. Acceptance for a late charge shall not constitute a waiver of default and shall not prevent the City and County from exercising any other

rights or remedies available to the City. Any payment deferred in accordance with the provisions of this Note shall not be subject to a late charge.

5. Manner and Place of Payment. Payments shall be made at the Neighborhood Preservation of the San Joaquin County, Community Development Department, 1810 E. Hazelton Avenue, Stockton, CA 95205, or at such other place as the holder hereof may inform Borrower in writing, in lawful money of the United States.

6. Waiver; Attorneys' Fees. Borrower waives presentment for payment, demand, protest, and notices of dishonor and of protest; the benefits of all waiveable exemptions; and all defenses and pleas on the ground of any extension(s) of the time of payment or of any due date under the Note, in whole or in part, whether before or after maturity and with or without notice. Borrower hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the holder hereof in the enforcement of the Note, the Regulatory and Loan Agreement and the Deed of Trust or any term or provision of any of such documents.

7. Acceleration. The entire balance of the obligation shall be immediately due and payable in the Event of Default as defined in the Regulatory and Loan Agreement, the Deed of Trust or in the event the Project is refinanced, sold, transferred or conveyed in any manner, or if Borrower reorganizes, modifies its partnership structure or transfers the Project as a portion of its assets. This loan is not assumable. Neither acceptance by the County of the payments provided for herein nor any failure by the City or the County to pursue their legal and equitable remedies upon default shall constitute a waiver of the City or County's right to require prompt payments when due of all principal and interest owing or to declare a default and exercise all of its rights under this Note, the Deed of Trust, and Regulatory and Loan Agreement.

8. Prepayment. Borrower shall have the right to prepay without penalty all or any part of the obligation evidenced by this Note.

9. Nonrecourse Obligation. Except as expressly provided in the second paragraph of this section 9, the Borrower, the Borrower's Officers, directors, employees and agents, and the Borrower's partners shall not have any direct or indirect personal liability for payment of the principal of, or interest on this Note or the performance of the covenants of the Trustor under the Deed of Trust securing this Note. The sole recourse of the County with respect to the principal of, or interest on, the Note and defaults by Trustor in the performance of its covenants under the Deed of Trust shall be to the property securing the indebtedness evidenced by the Note. No judgment, or execution thereon, entered in any action, legal or equitable, on the Note or the Deed of Trust shall be enforced personally against the property described in the Deed of Trust and such other or further security as, from time to time, may be hypothecated for the Note; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the County, or (b) be deemed in any way to impair the right of the County to assert the unpaid principal amount of the Note as demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note and the performance of Trustor's obligations under the Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of personal liability for (1) fraud or willful misrepresentation; (2) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (3) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; (4) the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; (5) the Borrower's indemnification obligations under the Regulatory and Loan Agreement; and (6) payment to the County any rental income or other income arising with respect to the Property received by the Borrower after the County has given notice to the Borrower of the occurrence of an Event of Default.

10. Assignment. The City and County's rights under this note may be assigned by the City and County in their discretion.

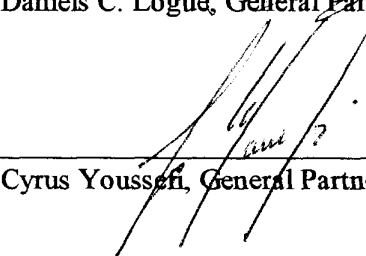
11. No Offset. The Borrower hereby waives any rights of offset it now has or may hereafter have against the City or County, their successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this Note.

12. Conflict. If any term or provision of this Note conflicts with any term or provision of the Regulatory and Loan Agreement the term or provision of the Regulatory and Loan Agreement shall control to the extent of such conflict.

BORROWER

Lodi Hotel Investors, A California Limited Partnership

By: 
Daniels C. Logue, General Partner

By: 
Cyrus Youssefi, General Partner

***PROMISSORY NOTE SECURED BY
DEED OF TRUST***

HOME PROGRAM

PROMISSORY NOTE SECURED BY DEED OF TRUST
(HOME PROGRAM)

Lodi, California

June __, 1996

FOR VALUE RECEIVED, Lodi Hotel Investors, a California Limited Partnership (the "Borrower"), having its office at 1001 Sixth Street, Suite 200, Sacramento, Ca 95814 hereby promises to pay the County of San Joaquin (the "County"), or order, a principal amount of Six Hundred Ninety Thousand, Fifteen Dollars (\$690, 015) advanced on behalf of Borrower by the County pursuant to the Regulatory and Loan Agreement dated June __, 1996, among Borrower, the City of Lodi (the "City") and the County, plus interest as set forth below.

Borrower shall make payments of principal and interest, at the rates, in the amounts, and at the times provided below.

1. Purpose. This Note evidences the obligation of Borrower to repay funds loaned to and advanced on behalf of Borrower by the County to pay certain costs in connection with the rehabilitation of affordable seniors housing development (the "Project") on property located in Lodi, California, as more particularly described in the Regulatory and Loan Agreement (the "Property"). All capitalized terms used but not defined in this Note shall have the meanings set forth in the Regulatory and Loan Agreement. Borrower shall not make any sale, assignment, conveyance, or transfer in any other form of the Project or the Property, or any part thereof or interest therein without the express consent of the City and County as provided in the Regulatory and Loan Agreement.

City and County

Borrower has also executed a promissory note in the amount of \$393,985 dated June __, 1996 in favor of the City (the "CDBG Note") as referenced in the Regulatory and Loan Agreement, which is also secured by the Deed of Trust described in Section 3. Said documents are public records on file with the City Clerk and the provisions of said documents are incorporated by this reference.

2. Interest and Payment Terms.

a. Interest. Simple interest shall be computed on the outstanding principal balance at a rate of six and one half percent (6.5%) annually, which shall accrue to the extent not currently paid pursuant to subsection b.

b. Payment of Principal and Interest. Principal and interest payments shall be repaid from Net Annual Cash Flow from the Project. Net Annual Cash Flow shall be defined as all income residential and commercial (including, without limitation, Section 8 housing

assistance payments and laundry income) from the Project less (i) a reasonable amount to be approved by the City and County, actually expended for the following Project costs: operating expenses such as administration, management, salaries, utilities operation, maintenance, taxes, license insurance and replacement/operating reserves; and less (ii) the amounts of debt service on the first deed of trust approved pursuant to Section 5.12 of the Regulatory and Loan Agreement; and less (iii) a partnership cash flow to the extent available up to the amount as needed to provide a debt service ratio of 1 to 1:15 on first Deed of Trust Loan per year, any unpaid amounts shall not accrue and not be payable in future years; and less (iv) principal and interest on the CDBG Note; and less (v) principal and interest on the HOME Note. Any current interest not currently payable pursuant to this Subsection b. shall accrue and be paid when sufficient income is available as set-forth in this subsection b. Payments, if any, shall be due on June 1st of each year, commencing with the year first following the calendar year in which the first housing unit on the Property is placed in service.

c. Statement. Borrower shall submit to the City and County annually on June 1st a statement of the basis for calculation of the amount of the payment or nonpayment. An annual "audited financial statement" for the Project, prepared by a certified public accountant approved by the City and County, shall accompany each such statement, together with the annual tax return of Borrower.

d. Application of Payments. Payments shall be applied first to accrued interest, next to current interest and then to the outstanding principal balance.

e. Term. Notwithstanding any other provision of this Note, principal and interest payable pursuant to this Note shall be fully repaid within thirty (30) years.

3. Deed of Trust. This Note is secured by the Deed of Trust with Assignment of Rents (the "Deed of Trust") of even date herewith which shall be recorded on the Property in the Official Records of the County of San Joaquin.

4. Late Charge. Payments not made pursuant to Section 2(c) within thirty (30) days of the due date shall be considered delinquent. The Borrower acknowledges that late payment of amounts owing under this Note will cause the County to incur costs not contemplated by this Note, the exact amount of such costs being difficult and impractical to assess. Such costs include without limitation, processing and accounting charges. Therefore, if any payment under this Note is not received within thirty (30) days of the date due, the Borrower agrees to pay to the County an additional amount of four percent (4%) of the payment due as a late charge, payment of the late charge shall not be subject to the provisions of section 2.b. related to Net Annual Cash Flow. The parties agree that the late charge represents a reasonable sum considering all the circumstances existing at the date of the execution of this Note and represents a fair and reasonable estimate of the costs the County would incur by reason of late payment and that proof of actual damages would be costly and inconvenient. Acceptance for a late charge shall not constitute a waiver of default and shall not prevent the City and County from exercising any other

rights or remedies available to the City and County. Any payment deferred in accordance with the provisions of this Note shall not be subject to a late charge.

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BORROWER

Lodi Hotel Investors, A California Limited Partnership

By: 

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